

Evaluating Post-Treaty Options in EU FTAs for Promoting more Ambitious Sustainability Commitments



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Evaluating Post-Treaty Options in EU FTAs for Promoting More Ambitious Sustainability Commitments

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Executive Summary

Countries have committed to considerably reducing emissions or achieving net zero by 2050 to prevent the disastrous impacts of climate change. Action is already urgent, with 2023 the hottest year on record according to the World Meteorological Organization.¹ However, harmful GHG emissions from trade in goods and services keep increasing, up to roughly 20-30% of global emissions.² In the spirit of reducing emissions towards a more sustainable future, a new report evaluates post-treaty options in EU Free Trade Agreements (FTAs) for promoting more ambitious sustainable development commitments. The report, based on a series of expert legal analyses, focuses on the EU's cooperation with various Latin American countries, also New Zealand and how to align with the urgent need for deeper climate mitigation, adaptation and finance efforts.

Renegotiating the text of an FTA can be burdensome and time-consuming for the parties involved. While exploring options to further push the sustainability agenda forward, the parties should explore alternative options that are equally effective but less troublesome. The experts, backed by a series of legal roundtables, examine post-treaty implementation instruments used by the EU and its trade partners, particularly committee and council decisions within the FTAs of the EU and the trading partner being analysed. These instruments offer a novel perspective on expanding sustainable development ambition without reopening treaty negotiations.

The report examines in detail the legal impact of post-treaty actions, highlighting the difference between amendments and other instruments. It explores examples of amendments and the interpretive value of non-amendment declarations. It underscores that interpretative declarations as well as other FTA committee decisions may be considered highly influential in the interpretation of the original treaty text, even without a formal amendment. They add further context to the treaty text, serving as an update, specification or extension to the original text. However, the report notes that the parties have left this potential largely untapped.

Based on the analysis, the report concludes with recommendations for proposed ways of incorporation and proposed wording for enhancing sustainable development commitments in EU FTAs. First, there is a need to identify key areas for trade-related climate cooperation between the EU and its trading partners. Second, all Parties' work programmes can review commitments on sectors sensitive to advance countries' Nationally Determined Contributions to global climate action. Third, action plans can be developed to cooperate in specific sectors, such as circular economy,

renewables, eco-innovation or biotrade. Fourth, Parties can introduce a Rendez-Vous clause, which establishes a programme of future meetings to effectively implement and review trade and sustainable development commitments. Finally, financial and technical support should be monitored, reported and verified. Fifth, interpretative decisions can be adopted by the Parties to further inject sustainability considerations into their trade relations. Examples such as the recent Joint Interpretation in the ambit of CETA about investment and climate change demonstrate this potential, as the parties updated the original treaty text by clarifying the relation between investment protection standards and the adoption of national climate change mitigation measures.

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1. Introduction

Commitments related to sustainable development often have to be upgraded and reviewed so that primary and secondary producers, traders, workers and civil society as a whole, receive additional benefits from their bilateral engagement.³ However, renegotiation of the text of a Free Trade Agreement (FTA) is not an easy task. Renegotiation of treaty text can be burdensome and an exhaustive exercise for the parties. Independently of the requirements set out by the treaty, the political process of reopening negotiations can be a perilous journey of reevaluating all of the aspects of the treaty, something which takes time and can exhaust political capital. The reopening of treaty text can also open a Pandora's box of possibilities of change, even if the issues are *prima facie* circumscribed to only one part of the text. In light of this scenario, other options, which are *de facto* just as effective and less troublesome, should be considered.

This report seeks to address useful options that are available to the European Union (EU) and its trade partners other than treaty amendment. In particular, it focuses on instruments that are and can be implemented after the adoption of the treaty text by the parties. It addresses post-treaty implementation instruments that are used by the EU and some of its trading partners. Particularly, this report analyses the relationship between the EU and various Latin American countries and blocks, as well as New Zealand, within the ambit of committee and council decisions. By doing so, it offers a novel perspective on how such instruments may prove themselves useful to expand sustainable development ambition.

Section III reviews the post-treaty implementation instruments for the relations between the EU and: Mexico, Chile, Central America, Andean Community, Mercosur and New Zealand. Section IV offers an analysis of the post-treaty options, in particular, but not limited to, the value of non-amendment instruments. Section V offers an analysis of different decisions and instruments. Section VI offers recommendations.

2. Agreements Covered and Decisions

³ Cáceres, J. and Delev, C., 'Where to Next? Modernizing Environmental Commitments in EU-Latin America Free Trade Agreements', Legal Issues of Economic Integration, Pg. 244.

A. EU-Mexico Global Agreement

The EU-Mexico Global Agreement was originally concluded in 1997 to create a framework for economic and political cooperation between the EU and Mexico, including over various aspects of their trade relations.⁴ While the Global Agreement does not introduce obligations requiring the Parties to sustain their existing obligations related to sustainable development, it nonetheless sets out an institutional infrastructure for post-treaty actions.

Under the environmental aspect of sustainable development, in Article 34(2), the Parties undertake to ‘develop cooperation’ in various areas of environmental protection.⁵ Similarly, Article 23(2) lists “supporting the use of alternative renewable sources of energy which protect the environment” as an issue-area falling within EU-Mexico cooperation on energy policy.⁶

Under the social and economic aspects of sustainable development, the Parties agree to “conduct a dialogue on all aspects of the social agenda of interest” to the parties.⁷ In this vein, they further recognise the “importance of harmonising economic and social development taking into account the need to respect the basic rights” of vulnerable groups.⁸ Moreover, Article 36(2) highlights the significance of welfare distribution, noting that “[t]he new basis for growth should create employment and ensure a better standard of living for the least favoured sections of the population”.⁹

To facilitate treaty implementation and cooperation on sustainable development, the Global Agreement established a Joint Council which meets at the ‘minister level’ and is composed of representatives from the EU Commission and Council, as well as ‘Members of the Government of Mexico.’¹⁰ The mandate of the Joint Council extends to ‘examin[ing] any major

⁴ Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and its Member States, of the one part and the United Mexican States, of the other part [2000] OJ L276/45 (EU-Mexico Global Agreement).

⁵ Article 34(2) EU-Mexico Global Agreement reads: ‘The Parties undertake to develop cooperation to prevent degradation of the environment; to promote the conservation and sustainable management of natural resources; to develop, spread and exchange information and experience on environmental legislation, to stimulate the use of economic incentives to promote compliance; to strengthen environmental management at all levels of government; to promote the training of human resources, education in environmental topics and the execution of joint research projects; to develop channels for social participation.’

⁶ Article 23(2) EU-Mexico Global Agreement.

⁷ Article 36 (1) EU-Mexico Global Agreement.

⁸ Article 36(1) and (2) of the EU-Mexico Global Agreement.

⁹ Article 36(2) of the EU-Mexico Global Agreement.

¹⁰ Articles 45 and 46(1) EU-Mexico Global Agreement.

issues arising within the framework of [the EU-Mexico Global Agreement] and any other bilateral or international issues of mutual interests’ and is empowered to adopt decisions or recommendations ‘by agreement.’¹¹ To support the ‘performance’ of the Joint Council’s ‘duties’, the Global Agreement further created a Joint Committee, composed primarily of senior civil servants, which may produce recommendations and decisions.¹²

As outlined, the EU-Mexico Joint Council and Joint Committee formally maintain the broad powers to create stronger norms governing the linkage between trade and sustainable development through binding decisions or to adopt post-treaty instruments shaping the interpretation of the Global Agreement. As discussed in Section IV, adopting such instruments may serve as context of subsequent agreement under Article 31 of the Vienna Convention on the Law of Treaties (VCLT) in the interpretation of the Global Agreement. In practice, however, these treaty bodies have primarily served as forums for diplomatic cooperation on sustainability and sources of information-sharing between the parties. For instance, in 2023, the Joint Committee restated the parties’ commitment to their sustainable development agenda and that the World Trade Organization’s (WTO) ‘13th Ministerial Conference (MC13) can deliver successful outcomes.’¹³ Similarly, the Joint Committee provided a forum for the EU to address issues concerning the design and implementation of its Carbon Border Adjustment Mechanism with the Mexican delegation.¹⁴

As this example illustrates, even though the Joint Council and Joint Committee maintain powers to adopt post-treaty actions, they have largely served to supplement cooperation on the sustainable development agenda within other forums and to provide transparency regarding the sustainable development impact of unilateral measures. Likely owing to these limitations, in 2018, the EU and Mexico agreed to create a specialised Trade and Sustainable Development Sub-Committee (TSD Sub-Committee) under a modernised EU-Mexico FTA. As proposed, the TSD Sub-Committee ‘compris[ing] senior officials or their delegates, from each

¹¹ Articles 45 and 47 EU-Mexico Global Agreement.

¹² Article 48 EU-Mexico Global Agreement. For the Joint Committee’s rules of procedure, see Decision No 1/2001 of the EU-Mexico Joint Council of 27 February 2001 establishing the Rules of Procedure of the EU-Mexico Joint Council and the Rules of Procedure of the EU-Mexico Joint Committee [2001] OJ L70/1.

¹³ EU Commission, 16th Mexico-EU Joint Committee on Trade Issues’ (16 February 2023) <circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/e6d7f4fa-4b64-486c-bb21-b7973384e4c8/details> accessed 7 November 2023, at 7-8.

¹⁴ Ibid.

Party’ will notably ‘facilitate and monitor the effective implementation’ of the EU-Mexico Trade and Sustainable Development chapter, ‘including cooperation activities undertaken under [the] Chapter.’¹⁵ By monitoring the implementation and enforcement of the Agreement, the TSD Sub-Committee may supplement existing institutions by identifying subsequent practice that assists in interpreting the TSD Chapter of the modernised EU-Mexico FTA for the purposes of Article 31(3)(b) VCLT. In addition, a procedure is established for the Parties to conduct consultations “regarding the interpretation or application of [the Trade and Sustainable Development] Chapter.”¹⁶ While this procedure seems to be mainly created to politically resolve chapter-specific disputes before a panel of experts addresses them, it *de facto* may serve as a mechanism for the Parties to adopt chapter-specific interpretative declarations.

Assuming the proposed EU-Mexico FTA is adopted, the Parties may still draw on the Mexican experience of adopting post-treaty actions, particularly the United States-Mexico-Canada Agreement (USMCA) and Comprehensive and Progressive Trans-Pacific Partnership (CPTPP).¹⁷ Within the USMCA context, Mexico, Canada and the United States cooperate on implementing and enforcing the USMCA environment chapter through the Commission for Environmental Cooperation, which was created through a separate agreement but is referred to expressly within the USMCA.¹⁸ Following meetings between the Parties, the Commission for Environmental Cooperation regularly adopts joint statements which detail the Commission’s activities but also stress the Parties’ common intentions and understandings.¹⁹ Similarly, the

¹⁵ Article 14(1) and (3) European Commission, ‘Trade and Sustainable Development’ (11 August 2022) <circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/ec8b7432-1b1a-422a-86c5-7b9ab158694a/details> accessed 7 November 2023 (EU-Mexico TSD Chapter).

¹⁶ Article 16(1) EU-Mexico TSD Chapter.

¹⁷ Agreement between the United States of America, the United Mexican States and Canada (adopted 30 November 2018, entered into force 1 July 2020) <ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between> accessed 7 November 2023 (USMCA); Comprehensive and Progressive Agreement for Trans-Pacific Partnership (adopted 23 January 2018, entered into force 30 December 2018) <www.dfat.gov.au/trade/agreements/in-force/cptpp/official-documents> accessed 7 November 2023.

¹⁸ Articles 24.25, 24.26, 24.27 and 24.28 USMCA; Agreement on Environmental Cooperation among the Governments of the United States of America, the United Mexican States and Canada (adopted 30 November 2018, entered into force 1 July 2020) <www.epa.gov/sites/default/files/2018-11/documents/us-mxca_eca_-_final_english.2.pdf> accessed 7 November 2023.

¹⁹ See, notably, USTR, ‘Joint Statement on the Third Meeting of the Environment Committee of the United States-Mexico-Canada Agreement’ (27 September 2022) <ustr.gov/sites/default/files/2023_09_28%20Joint%20Statement%20CLEAN.pdf> accessed 7 November 2023; USTR, ‘Joint Statement on the Second Meeting of the Environment Committee of the United States-Mexico-Canada Agreement’ (7 November 2023) <ustr.gov/sites/default/files/2022-09/2022_09_23%20Joint%20Statement_0.pdf> accessed 7 November 2023; USTR, ‘Joint Public Statement on the Inaugural Meeting of the Environment Committee of the United States-Mexico-Canada Agreement’ (17 June 2021) <ustr.gov/about-us/policy-offices/press-office/press-releases/2021/june/joint-public-statement-in-inaugural-meeting-environment-committee-united-states-mexico-canada-agreement> accessed 7 November 2023.

USMCA created the Labour Council²⁰ which meets to discuss aspects of its labour chapter. In a recent meeting, the parties noted their “full commitment to the effective implementation of the innovative and ambitious USMCA labor obligations and reiterated their desire to promote and ensure the protection of internationally recognized labor rights”.²¹

Under the CPTPP, by contrast, Mexico has adopted two side letters with Canada which likely constitute agreements modifying the CPTPP *inter se* in line with Article 41(1) VCLT.²² The EU and Mexico may adopt such agreements, which would constitute *lex posterior* prevailing over the EU-Mexico FTA in regard to Article 30(3) VCLT. These approaches may provide guidance for how the EU and Mexico may develop their post-treaty actions in support of environmental protection.

B. EU-Chile

The European Union-Chile agreement (EU-Chile agreement) was concluded in 2002, becoming the first agreement between the EU and a South American economy. While it was a comprehensive treaty including trade, political and cooperation provisions, Parties recognized the need to modernize it, including, amongst other topics, more ambitious trade and sustainability provisions.²³ The modernization process was officially initiated in 2016. For this process, the EU conducted both *ex-post* trade analysis of the agreement and an *ex-ante* sustainable impact assessment (SIA). The SIA recommended considering measures to secure the benefits or mitigate the potential adverse effects of the modernized agreement.²⁴ The SIA highlighted the specific areas to consider including: energy production, biodiversity, waste, air quality, water quality and land use.²⁵ With the conclusion of the technical negotiations in

²⁰ Article 23.14 of the USMCA.

²¹ USTR, ‘Joint Statement of the Labor Council’, United States-Mexico-Canada Agreement (June 30, 2023) <<https://mx.usembassy.gov/joint-statement-of-the-labor-council-united-states-mexico-canada-agreement-usmca/>>.

²² Exchange of Letters between Ildefonso Guajardo Villarreal and Steven Ciobo (8 March 2018) <www.dfat.gov.au/sites/default/files/sl13-australia-mexico-distinctive-products.pdf> accessed 7 November 2023; Exchange of Letters between Ildefonso Guajardo Villarreal and Steven Ciobo (8 March 2018) <www.dfat.gov.au/sites/default/files/sl14-australia-mexico-ippa-termination.pdf> accessed 7 November 2023.

²³ Cáceres, J. (2022). Brief on the Chile Inclusion of Environment Commitments in Trade Agreements and The Current EU-Chile Trade Agreement Negotiations, in INTERNATIONAL TRADE, CLIMATE CHANGE and ENVIRONMENTAL INTERFACES: UK LEGAL BRIEF SERIES. Online <https://www.cisdl.org/wp-content/uploads/2022/05/Brief-on-the-Chile-Inclusion-of-Environment-Commitments-in-Trade-Agreements-and-The-Current-EU-Chile-Trade-Agreement-Negotiations_Javiera-Caceres-Bustamante_revised.pdf>

²⁴ European Commission. Final report: Sustainability Impact Assessment in Support of the Negotiations for the Modernisation of the Trade Part of the Association Agreement with Chile (2019), online <https://trade.ec.europa.eu/doclib/docs/2020/february/tradoc_158647.pdf>

²⁵ Cáceres, J. (2022). Brief on the Chile Inclusion of Environment Commitments in Trade Agreements and The Current EU-Chile Trade Agreement Negotiations, in INTERNATIONAL TRADE, CLIMATE CHANGE and ENVIRONMENTAL INTERFACES: UK LEGAL

November 2021,²⁶ the draft text available (EU-Chile modernized agreement) shows advances, including; dispositions related to emerging challenges such as climate change and the effective implementation of the Paris Agreement, alliances on energy transition, raw materials, becoming strategic partners to promote the EU Green Deal and the Chilean National Green Hydrogen Strategy, among others.²⁷

The EU-Chile agreement includes some trade and sustainable development provisions, starting with its preamble: “the need to promote economic and social progress for their peoples, taking into account the principle of *sustainable development and environmental protection requirements*.”²⁸ Moreover, the modernized agreement explicitly refers to the three dimensions of sustainable development in its second article, which defines the agreement objectives as: “the development of international trade in a way as to contribute to sustainable development in its economic, social and environmental dimensions,”²⁹ and includes an entire chapter on Trade and Sustainable Development (TSD).³⁰

The TSD chapter advances on recognising the linkage between trade and sustainable development and how trade instruments may promote sustainable development in both economies. As stated in its objectives, “[T]he Parties recognise that *sustainable development encompasses economic development, social development and environmental protection*, all three being inter-dependent and mutually reinforcing, for the welfare of present and future generations.”³¹ It also recognizes “the *right of each party to determine its sustainable development* policies and priorities” but also that “[a] Party shall not *weaken or reduce the*

BRIEF SERIES. Online <https://www.cisd.org/wp-content/uploads/2022/05/Brief-on-the-Chile-Inclusion-of-Environment-Commitments-in-Trade-Agreements-and-The-Current-EU-Chile-Trade-Agreement-Negotiations_Javiera-Caceres-Bustamante_revised.pdf>

²⁶ As of November 2023, the modernized version of the EU-Chile has not yet come into force.

²⁷ SUBREI. (2021). Finalizan negociaciones de la modernización del Acuerdo de Asociación entre Chile y la Unión Europea. online <<https://www.subrei.gob.cl/sala-de-prensa/noticias/detalle-noticias/2021/11/15/finalizan-negociaciones-de-la-modernización-del-acuerdo-de-asociación-entre-chile-y-la-unió-n-europea>>

²⁸ Preamble. European Union-Chile Free Trade Agreement (signed 18 November 2002), online: <https://eur-lex.europa.eu/resource.html?uri=cellar:f83a503c-fa20-4b3a-9535-f1074175eaf0.0004.02/DOC_2&format=PDF>. [EU-Chile agreement]

²⁹ Article 1.2.(i). EU-Chile modernized free trade agreement (signed 9 December 2022), online: <https://www.subrei.gob.cl/docs/default-source/acuerdos/acuerdo-marco-avanzado-ue/chapter-1-general-provisions.pdf?sfvrsn=5d52f47d_2> [EU-Chile modernized agreement]

³⁰ Chapter 26. Trade and Sustainable Development. EU-Chile modernized agreement. https://www.subrei.gob.cl/docs/default-source/acuerdos/acuerdo-marco-avanzado-ue/chapter-26-trade-and-sustainable-development.pdf?sfvrsn=46902518_2

³¹ Article 26.1.2 Trade and Sustainable Development. EU-Chile modernized agreement. https://www.subrei.gob.cl/docs/default-source/acuerdos/acuerdo-marco-avanzado-ue/chapter-26-trade-and-sustainable-development.pdf?sfvrsn=46902518_2

levels of protection afforded in their respective domestic environmental and labour laws in order to encourage trade or investment.”³² Moreover, the TSD chapter outlines the main areas of cooperation between the EU and Chile in sustainable development issues, including Trade and Responsible Business Conduct and Supply Chain Management;³³ Multilateral Environmental Governance and Agreements;³⁴ Trade and Climate Change;³⁵ Trade and forests;³⁶ Trade and Wild Flora and Fauna;³⁷ Trade and Biological Diversity;³⁸ and Trade Sustainable Management of Fisheries and Aquaculture.³⁹

The modernized agreement establishes a Trade Council “which shall oversee the fulfilment of the objectives of this Agreement and supervise its implementation.”⁴⁰ This Council “shall *have the power to adopt decisions* in the cases provided for in this Agreement and to make appropriate recommendations, following its rules of procedure”⁴¹ and to “adopt decisions to *amend this Agreement*” including those related to Annex XXI on Sub-Committees. These provisions would give the Trade Council powers to advance stronger norms governing the linkage between trade and sustainable development, including adopting post-treaty instruments and amendments to the agreement.

The TSD chapter establishes an institutional framework specific to sustainable development issues that Parties can use to advance their agendas. This Subcommittee Article 26.19 set up the Sub-Committee on Trade and Sustainable Development and Contact Points. Among the functions of the Subcommittee, Article 26.19.3 states that it shall:

- "(a) *facilitate, monitor and review the implementation of this Chapter*;
- (b) determine organize, oversee and assess the *cooperation activities of this Chapter*, including exchange of information and experience on areas of mutual interest;

³² Ibid, Article 26.2.1.

³³ Ibid, Article 26.3.

³⁴ Ibid, Article 26.9.

³⁵ Ibid, Article 26.10.

³⁶ Ibid, Article 26.11.

³⁷ Ibid, Article 26.12.

³⁸ Ibid, Article 26.13.

³⁹ Ibid, Article 26.14.

⁴⁰ Ibid, Article 26.2.4.

⁴¹ Article 33.1.4. Institutional and final provisions. EU-Chile modernized agreement. https://www.subrei.gob.cl/docs/default-source/acuerdos/acuerdo-marco-avanzado-ue/chapter-33-institutional-and-final-provisions.pdf?sfvrsn=81e0c7b6_2.

- (c) ***report and make recommendations to the Trade Committee*** on any matter related to this Chapter, including with regard to topics for discussion with ... [the civil society mechanisms] referred to in Article ... of Chapter;
- (d) carry out the tasks referred to in Articles 26.21 [Consultations] and 26.22 [Panel of Experts];
- (e) coordinate with other Sub-Committees established under this Agreement as appropriate, including the efforts referred to in Article 27.4, paragraph 8 of the chapter on Trade and Gender Equality;
- (f) carry out any other functions as the Parties may agree."⁴²

With this institutional framework, when adopted and in force, the EU-Chile modernized agreement will provide a solid institutional and legal framework to advance in trade and sustainable development-related topics. To date, most actions have been established as cooperation activities. Currently, commitments in the TSD are not subject to the agreement dispute resolution system, which sets a specific consultation mechanism for disputes related to sustainable development.

Regarding the current practice and post-treaty actions, the EU and Chile discussed issues related to sustainable development within various committees derived from the EU-Chile agreement, covering topics the modernized version has included in its text. The latest Joint Statement on Trade and Sustainable Development was issued in December 2022 and it highlighted that the Parties to the Agreement are committed to promoting sustainability by balancing economic growth with the protection of decent work, the climate and the environment, guided by shared values and priorities like supporting green transition and responsible value chains. They also emphasized the effective implementation of the UNFCCC and the Paris Agreement, including their commitments to reduce greenhouse gas emissions. Upon the modernized agreement's entry into force, the parties plan to conduct a formal review process to potentially add provisions related to enforcement mechanisms and explore the inclusion of the Paris Agreement as an essential element of the Agreements, regardless of the review's outcome.

As the TSD subcommittee will have the power to ***“facilitate, monitor and review the implementation of this Chapter”*** and ***“report and make recommendations to the Trade***

⁴² Article 26.19. Trade and Sustainable Development, EU-Chile modernized agreement.

Committee on any matter related to this Chapter”, this will assist the Trade Council and other relevant bodies, in interpreting the TSD Chapter of the modernized agreement for Article 31(3)(b) VCLT. When reviewing the practice of these committees between the EU and Chile, it can be stated that they have primarily served as forums for exchanging information and coordinating cooperation activities. Nevertheless, upon the entry into force of the modernized EU-Chile agreement, the Trade Council will have broad powers to advance, including more substantial commitments governing the linkage between trade and sustainable development.

Furthermore, in December 2022, in a Joint Statement on Trade and Sustainable Development issued by the EU and Chile in the context of the culmination of the negotiation of the agreement, it was stated that once the agreement enters into force, the Trade Council will look for “the incorporation, as appropriate, of *additional provisions* that may be deemed relevant by either Party at that time, including in the context of their respective domestic policy developments and their recent international treaty practice, as the Parties may consider appropriate. Such additional provisions may relate, in particular, to further *enhancing the enforcement mechanism of the Trade and Sustainable Development chapter*, including the possibility to apply a compliance phase and relevant countermeasures as last resort.”⁴³ In this process of including additional provisions and enhancing the enforcement mechanism of the TSD chapter, officials of the EU and Chile may draw on commitments included in other EU agreements. For example, the EU-Kenya agreement provides specific commitments to help finance cooperation activities.

C. EU-Central America

Trade relations between the EU and the Central American region are determined by an Association Agreement signed in June 2012. This agreement covers, inter alia, trade, political dialogue and cooperation. The Central American countries involved are Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama.

The trade pillar of the EU-Central America Association Agreement entered into force in 2013 and includes a Trade and Sustainable Development Title, reflecting the Parties’ commitments on labour and environment-related matters being of importance for their trade

⁴³ EU-Chile. Joint Statement on Trade and Sustainable Development by the European Union and Chile, December 2022. <https://circabc.europa.eu/rest/download/96cafa19-80fe-4455-b63b-ea36adf2635a?>

relations and the overall objective of supporting sustainable development. These commitments include, amongst other things, implementation of the fundamental conventions of the International Labour Organization (ILO), multilateral environmental agreements such as the Convention on Biological Diversity, the UN Framework Convention on Climate Change and the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES).

Moreover, the EU and Central American countries have undertaken commitments to ensure a high level of labour and environmental protection in their domestic legislation – in line with the goals of sustainable development - to strive to improve laws and policies in these areas and not to lower these levels in order to attract trade or investment. They have also expressed the will to cooperate in areas related to trade and, respectively, labour, the environment and sustainable development. This includes facilitation of trade and investment in environmental technologies and services, the promotion of renewable energy and energy-efficient products, the promotion of corporate social responsibility (CSR) and of trade in products subject to ethical or fair-trade schemes. Cooperation may also include trade-related aspects of the sustainable management of forest resources, the promotion of sustainable fishing and other relevant areas. The Parties have also committed to monitoring the impact of the Agreement.⁴⁴

Multilateral relations are undoubtedly of special relevance for Central American countries. This document identifies that one of the strengths of the current EU–CA Association Agreement is the promotion of international cooperation and political dialogue between the parties. Given the current economic and social situation in the region, access to financing and the exchange of information on topics related to sustainable development (including climate change) and technical cooperation for developing countries ultimately strengthens resilience and improves their capacity to adapt to the impacts of climate change which are particularly relevant.

⁴⁴ The EU-Central America Domestic Advisory Group. See: <https://www.eesc.europa.eu/en/sections-other-bodies/other/eu-central-america-domestic-advisory-group#downloads>

D. EU-Andean Community

The EU-Colombia-Ecuador-Peru Agreement (EU-Andes)⁴⁵ results from bilateral efforts between the European Union and the Andean Community to strengthen their bilateral relations. Nevertheless, because of coordination problems within the Andean Community, the EU-Andes agreement was initially concluded and provisionally applied in 2013 between the EU, Colombia and Peru.⁴⁶ Following Article 328,⁴⁷ after acceding to the EU, Croatia formally joined the agreement and in 2017, under the procedures established in Article 329, Ecuador became a member.⁴⁸ This same article set the scope for future negotiations for Bolivia's accession.

Following the EU practice, the EU-Andes agreement reflects a dual purpose of promoting trade liberalization and fostering cooperation between its Parties on sustainable development.⁴⁹ Within the agreement's objectives, Article 4.j states that it is an objective: "[t]o promote international trade in a way that contributes to the ***objective of sustainable development*** and to work in order to integrate and reflect this objective in the Parties' trade relations."⁵⁰ This dimension is further expanded within Title IX on Trade and Sustainable Development (TSD). For instance, Article 267, "Context and Objectives" the objectives of 'cooperation' and 'strengthen[ing]' of rules on sustainable development, as well as underlining "the benefit of considering trade-related labour and environmental issues as part of a global approach to trade and sustainable development".⁵¹

The inclusion of the TSD title within the EU-Andes agreement allows the incorporation of four main functions related to environmental dimension of sustainable development: i) to incorporate norms from other chapters or international legal instruments; ii) to establish norms requiring cooperation or the promotion of best practices, iii) to enable citizen participation in

⁴⁵ Trade Agreement between the European Union and its Member States, of the one part and Colombia and Peru, of the other part, Official Journal of the European Communities 354/3 (2012) [EU-Andes Agreement]. Ecuador acceded to the agreement in 2017.

⁴⁶ Cáceres, J., & Delev, C. (2023). Where to Next? Modernizing Environmental Commitments in EU-Latin America Free Trade Agreements. *Legal Issues of Economic Integration*, 50(3).

⁴⁷ Article 328 EU-Andes Agreement.

⁴⁸ Article 329 EU-Andes Agreement.

⁴⁹ Cáceres, J., & Delev, C. (2023). Where to Next? Modernizing Environmental Commitments in EU-Latin America Free Trade Agreements. *Legal Issues of Economic Integration*, 50(3).

⁵⁰ Article 4.j. EU-Andes Agreement, see also Cáceres, J., & Delev, C. (2023). Where to Next? Modernizing Environmental Commitments in EU-Latin America Free Trade Agreements. *Legal Issues of Economic Integration*, 50(3).

⁵¹ Article 267(1) of the EU-Andes Agreement, see Cáceres, J., & Delev, C. (2023). Where to Next? Modernizing Environmental Commitments in EU-Latin America Free Trade Agreements. *Legal Issues of Economic Integration*, 50(3).

the application of the title and iv) to create a mechanism for dispute settlement.⁵² Similarly, under the economic and social aspect of sustainable development, the parties “reaffirm their commitments to promote the development of international trade in a way that contributes to productive employment and decent work for all.”⁵³ To this end, the parties rely on dialogue and cooperation;⁵⁴ effective implementation of core labour standards contained in the ILO Conventions⁵⁵ and exchange of information.⁵⁶

Still under the TSD title, the Agreement includes an article on the right to regulate,⁵⁷ and through various commitments, it uses level-playing-field obligations derived from the Parties’ MEAs. It further includes a provision on “trade favouring sustainable development” where the parties “reaffirm that trade should promote sustainable Development”; “recognise the beneficial role that core labour standards and decent work can have on economic efficiency, innovation and productivity”; and strive to facilitate and promote trade and foreign direct investment in environmental goods and services; seek to promote best business practices related to corporate social responsibility.⁵⁸

The EU-Andes Agreement also emphasizes cooperation on sustainable development and promoting certain legal practices. It covers various areas such as trade in forest products,⁵⁹ sustainable fishing,⁶⁰ climate change,⁶¹ and trade and sustainable development.⁶² These provisions primarily require parties to engage in good faith and adhere to the principle of common but differentiated responsibilities.⁶³

One aspect to highlight from the EU-Andes agreement is the encouragement of dialogue with civil society. Its TSD title mandates consultations with domestic labour and

⁵² Delev, C. (2022). Ratcheting up Environmental Protection Standards: What are the Opportunities for Improving the EU-Andes Trade Agreement?; Cáceres, J., & Delev, C. (2023). Where to Next? Modernizing Environmental Commitments in EU-Latin America Free Trade Agreements. *Legal Issues of Economic Integration*, 50(3).

⁵³ Article 269 EU-Andes Agreement

⁵⁴ Ibid, Article 269(2).

⁵⁵ Ibid, Article 269(3).

⁵⁶ Ibid, Article 269(4).

⁵⁷ Ibid, Article 268.

⁵⁸ Ibid, Article 271.

⁵⁹ Ibid, Article 273.

⁶⁰ Ibid, Article 274.

⁶¹ Ibid, Article 275.

⁶² Ibid, Article 286.

⁶³ Ibid, Article 267.4.

environmental committees.⁶⁴ Also, Parties must review and assess the agreement's impact on the environment through domestic participative processes.⁶⁵ Dispute resolution procedures for the agreement are excluded from the agreement's dispute settlement mechanism.⁶⁶ The TSD title established an inter-governmental consultation process from which non-binding recommendations from a Group of Experts derive.⁶⁷

From an institutional perspective, the EU-Andes agreement establishes through its Article 12 a Trade Committee, with various functions including: "supervise and facilitate the operation of this Agreement and the correct application of its provisions and ***consider other ways to attain its general objectives***"⁶⁸ and "evaluate the results obtained from the application of this Agreement, in particular the evolution of the trade and economic relations between the Parties."⁶⁹ While these functions may seem to provide power for the Trade Committee to advance in post-treaty action, the agreement also establishes some limitations. For instance, while the Trade Committee may "***adopt interpretations of the provisions of this Agreement***. Such interpretations shall be taken into consideration by arbitration panels established under Title XII (Dispute Settlement),"⁷⁰ this provision has an explicit footnote establishing limits to said interpretations. As mentioned in footnote 4, the "interpretations adopted by the Trade Committee ***shall not constitute an amendment or modification to the provisions of this Agreement***."⁷¹

The EU-Andes agreement also includes a provision to establish specialized bodies, amongst them a Sub-committee on Trade and Sustainable Development.⁷² The functioning of this subcommittee is defined in Article 280.2, by which: "[t]he Parties hereby establish a ***Sub-committee on Trade and Sustainable Development***. The Sub-committee on Trade and Sustainable Development shall comprise high level representatives from the administrations of each Party, responsible for labour, environmental and trade matters."⁷³ The Sub-committee has

⁶⁴ Ibid, Article 282.

⁶⁵ Ibid, Article 276.

⁶⁶ Ibid, Article 285.5.

⁶⁷ Ibid, Article 283.

⁶⁸ Ibid, Article 13.1.a.

⁶⁹ Ibid, Article 13.1.b.

⁷⁰ Ibid, Article 13.2.3.

⁷¹ Ibid, Article 329.

⁷² Ibid, Article 15.1.(f).

⁷³ Ibid, Article 280.2.

several key functions. First, it is responsible for monitoring and taking action to achieve sustainable development objectives. Second, it can provide recommendations to the Trade Committee for adequately implementing this aspect of the agreement. Third, it identifies areas of cooperation and ensures the effective implementation of such cooperation. Additionally, it assesses the agreement's impact on labour and the environment when necessary. Lastly, it can address any other matters related to its scope of application while also recognizing the existence of specific dispute resolution mechanisms outlined in Articles 283, 284 and 285.⁷⁴

As an example of the resolutions adopted by the Sub-Committee, it can be noted that Joint Statements have been produced to inform civil society of the topics the sub-committee covers. Following the 8th TSD sub-committee meeting, held in November 2021, the Parties issued a Joint Statement declaring that the European Union defined the priorities for trade & sustainability: labor inspection, freedom of association, child labor, social dialogue, labor informality, support for green transition as a basis for sustainable recovery policies and to face global challenges.⁷⁵ From Latin American Parties, it was highlighted that Colombia had increased its greenhouse gas reduction targets significantly; has adopted various measures and laws to address climate change; its social and economic policies adopted in the context of the pandemic and its strengthening of its labour laws.⁷⁶ Ecuador, in turn, presented its initiatives like the Cero Carbon Programme, Compact for Transition to Decarbonisation and is working on a National Climate Change Adaptation Plan; underscored its economic and social response to the pandemic; eradication of child labour, among others.⁷⁷ Furthermore, the EU informed that it is proposing a Corporate Sustainability Due Diligence Directive to consider the environmental, human rights and climate change impacts of companies' activities.

As shown above, in the case of the EU-Andes agreement, the Trade Committee and TSD subcommittee do not have the power to exercise interpretations that may constitute an amendment or modification to the Agreement's provisions. Nevertheless, these bodies may provide relevant interpretations that shall be considered in arbitration panels and used for the agreement's proper implementation and best use. The practice to date of post-treaty actions,

⁷⁴ Ibid, Article 280.6.

⁷⁵ VIII Meeting of the Subcommittee on Trade And Sustainable Development of the Trade Agreement Between the European Union (Eu) of the One Part and Colombia, Ecuador and Peru, of the Other Part, Pg. 1.

⁷⁶ Ibid, Pg. 4.

⁷⁷ Ibid, Pg. 3.

including joint decisions related to sustainable development issues, mainly cover cooperation and information exchange between the parties. For this and following the EU practice, the EU-Andes agreement responsiveness to sustainable development may be advanced by modernizing the responsibilities and broad scope of the action of these committees to allow them to improve the provisions in the agreement. Decisions such as this emanated from the renegotiation process between EU-Chile that mandated the TSD subcommittee to explore further avenues to strengthen the TSD dispute settlement mechanism which may be used as an example for post-treaty actions to be considered in the EU – Andes trade relation.

E. EU-Mercosur

Trade relations between the Southern Common Market (MERCOSUR) and the European Union (EU) are relevant for both blocs and are based on the 1999 Inter-regional Framework Cooperation. Negotiations towards an EU–MERCOSUR Association Agreement started in 2000,⁷⁸ with the objective of boosting trade integration among MERCOSUR members and creating new opportunities for trade and investment with the EU. This agreement represents, for the EU, the deepening of its trade and investment links to the region;⁷⁹ and, for MERCOSUR, a consolidation of its status as a regional trading bloc. While negotiations on the ‘cooperation’ and ‘political dialogue’ chapters of the agreement have been concluded, negotiation of the trade pillar has encountered various barriers and opposition throughout. In 2004, negotiations were paused following the 2003 WTO Cancún Ministerial Conference, in which negotiations between Brazil (and other developing countries), the US and the EU ended abruptly. Bilateral negotiations were re-launched in May 2010 and paused again in 2012 due to Paraguay’s suspension from MERCOSUR.⁸⁰ In May 2016, negotiations continued, following

⁷⁸ Andrade Correa, F. and Leehmen, A., ‘Trade, Sustainable Development and Climate Change: How Can Free Trade Agreements Be Leveraged for Increased Climate Action? Perspectives on the EU-MERCOSUR Agreement’ Pg. 288.

⁷⁹ Ibid.

⁸⁰ Due to the impeachment of its president Fernando Lugo.

a round in October 2016.⁸¹ After 38 negotiation rounds,⁸² a political agreement for an Association Agreement, including a trade component, was finally reached in June 2019.

For it to enter into force, the agreement requires the approval of the European Parliament, of national parliaments of the 27 EU Member States and of national parliaments of the Mercosur countries. Concerns about environmental impacts are among the issues that have led negotiations to take over 20 years to conclude and are still contentious at this phase.

From sustainable development standpoint, the EU-Mercosur Agreement is unique in the sense that the liberalization of trade it entails may have significant effects with regard to deforestation in Mercosur, home to the Amazon rainforest and other deforestation-sensitive biomes, especially by driving agricultural extensification. While there are studies establishing causal evidence on the relationship between trade liberalization and deforestation increase,⁸³ there is also evidence of the effectiveness of including specific provisions aimed at protecting forests and/or biodiversity in FTAs,⁸⁴ as well as on greening exports of developing countries.⁸⁵

The TSD Chapter of the EU-Mercosur Agreement sets forth a review mechanism for enhancing the objectives of sustainable development, as follows:

Article 18

Review

1. For the purpose of enhancing the achievement of the objectives of this Chapter, the Parties shall discuss through the meetings of the Trade and Sustainable Development Sub-Committee its effective implementation, including a possible review of its provisions, taking into account, inter alia, the experience gained, policy

⁸¹ European Commission, *Countries and regions: MCS* (2018), <http://ec.europa.eu/trade/policy/countries-and-regions/regions/MCS/>. Moreover, the EU had a longstanding interest in supporting the MCS project of regional integration, which it also saw as reinforcing regionalism as an important feature of global governance. See further, in this regard, Fabiano de Andrade Correa, *The implementation of sustainable development in regional trade agreements: a case study on the European Union and MCS* (European University Institute 2013). <http://hdl.handle.net/1814/28034>.

⁸² European Commission. "Latest round reports and EU proposals for the trade agreement with MERCOSUR(2018). Online: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1769>

⁸³ Abman, R. and Lundberg, C. (2020) "Does free trade increase deforestation? the effects of regional trade agreements," *Journal of the Association of Environmental and Resource Economists*, 7, 35–72.

⁸⁴ Abman, Ryan Michael, Lundberg, Clark Christopher and Ruta, Michele, 2021. "The Effectiveness of Environmental Provisions in Regional Trade Agreements." *Policy Research Working Paper Series* 9601, The World Bank.

⁸⁵ Brandi, Clara, Schwab, Jakob, Berger, Axel and Morin, Jean-Frédéric (2020) "Do environmental provisions in trade agreements make exports from developing countries greener?," *World Development*, 129, 104899.

developments in each Party, developments in international agreements and views presented by stakeholders.

2. The Trade and Sustainable Sub-Committee may recommend modifications to the relevant provisions of this Chapter reflecting the outcome of the discussions referred to in paragraph 1 above, in accordance with the amendment procedure established in Article X [*Amendments*].]

On July 8, 2020, the European Commission published a draft Sustainability Impact Assessment (SIA) of the potential economic, social, environmental and human rights impact of the trade part of the association agreement between the European Union and Mercosur.⁸⁶ On March 21, 2021, the European Commission published the final version of the Sustainability Impact Assessment and a Position Paper on the EU-Mercosur Trade Agreement.⁸⁷ The SIA, drafted by the London School of Economics, notes that the EU-Mercosur agreement would have a positive impact on the economies of both blocs and that it would consolidate a critical partnership between the two blocs based on common values. Based on concerns about the agreement's potential impact on environment, human rights and indigenous peoples made in the SIA, the Commission recommends, in the Position Paper, the creation of a joint initiative that could include higher-level political engagement; intensified dialogue and cooperation to address deforestation and biodiversity loss, as well as developing sustainable business models; and private sector actions and green investment to mobilize public and/or private financial institutions, with a possible pledge linked to the signature of the agreement.

A February 2023 draft Joint Instrument proposed by the EU⁸⁸ includes, among other topics, the acknowledgment that 90% of deforestation in the world is due to agricultural expansion; a pledge not to lower labour and environmental standards to attract investment; an agreement to combat illegal logging; cooperation on measures to ensure that the products that citizens consume do not contribute to deforestation and forest degradation; measures to eliminate sources of forest fires in or near forested areas and to further reduce deforestation and forest degradation; public participation in environmental decision-making and access to

⁸⁶ European Commission. "European Commission publishes draft Sustainability Impact Assessment for the Trade part of the EU-Mercosur Association Agreement" (2020). Online: https://policy.trade.ec.europa.eu/news/european-commission-publishes-draft-sustainability-impact-assessment-trade-part-eu-mercrosur-2020-07-08_en

⁸⁷ Ibid.

⁸⁸ Friends of the Earth Europe, *EU-Mercosur Joint Instrument* (Feb 2023), <https://friendsoftheearth.eu/wp-content/uploads/2023/03/LEAK-joint-instrument-EU-Mercosur.pdf>.

justice in environmental; cooperate on sustainable supply chains, including supply chains for products not linked to deforestation; and support for the role of indigenous and local communities in protecting forests.

With regard to the environmental dimension of sustainable development, the proposed Joint Instrument expands on Article 6 of the TSD Chapter, mentioning the “timely communication and implementation of successive and progressive Nationally Determined Contributions (NDCs) reflecting the highest possible ambition, in accordance with Article 4.2 and 4.3 of the Paris Agreement,” and other obligations already undertaken under the Paris Agreement, such as the ratchet mechanism of progressive ambition. The document also mentions “legislative, regulatory and policy action aiming at making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development, in accordance with Article 2.1.c. of the Paris Agreement.”

On the social dimension of sustainable development, the draft Joint Instrument shares the intention to protect “of labour rights and recognise the role of the International Labour Organisation as the key multilateral organisation in this field”. The proposal also underscores that “the promotion of sustainable economic and social development is among the guiding principles underpinning the Political and Cooperation part of the Agreement.”

Mercosur’s response, in September 2023,⁸⁹ does not directly address the EU proposal, but instead sets a framework for further negotiations, accepting to negotiate a joint trade and sustainable development instrument that builds on text negotiated in 2019, in the context of the new circumstances of the global economy and the strategic value of the agreement. In doing so, Mercosur’s response, among other topics, rejects any incorporation of sanctions and any unilateral imposition of EU legislation. Regarding the latter issue, negotiations are likely to be impacted by the EU’s new anti-deforestation rules,⁹⁰ Carbon Border Adjustment Mechanism (CBAM),⁹¹ and due diligence requirements such as the Corporate Sustainability Due Diligence

⁸⁹ Valor Econômico. “Exclusivo: A íntegra da resposta do Mercosul à EU para concluir o acordo” (2023). Online: <https://valor.globo.com/opiniao/assis-moreira/coluna/a-integra-da-resposta-do-mercossul-a-ue-para-concluir-o-acordo.ghtml>

⁹⁰ Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010, OJ L 150 (2023) p. 206-247.

⁹¹ Council of the European Union, *Interinstitutional File: 2021/0214(COD), Regulation of the European Parliament and of the Council establishing a carbon border adjustment mechanism (CBAM) - Compromise text*, <https://data.consilium.europa.eu/doc/document/ST-16060-2022-INIT/en/pdf>.

Directive (CSDDD),⁹² as all proposals have ramifications that will significantly impact global value chains.

Mixed positions on the agreement have been reported at individual country level: the French National Assembly adopted a resolution on June 13, 2023,⁹³ calling for renegotiating the free trade agreement to ensure the inclusion of social and environmental clauses, while the European Commission, backed by Spain, is reportedly moving to finalize the deal by the end of 2023,⁹⁴ and so is Brazil.⁹⁵ Chief negotiators from both blocs met in Brasilia in early October, aiming to reach a deal before the end of the year during Brazil's six-month presidency of Mercosur and Spain's six-month presidency of the EU.⁹⁶ In October 2023, however, Brazil proposed that, in order to guarantee compliance with the objectives of the agreement, the EU should allocate financial resources to integrate the aforementioned mechanism in an amount of no less than 12.5 billion euros in subsidies, loans and other financial instruments.

Besides the TSD chapter, other controversial issues need to be resolved, such as the backtrack of concessions on government procurement defended by Brazil. On the institutional front, an avenue for overcoming a potential ratification deadlock has reportedly been floated by the European Commission, which would entail splitting the agreement into two parts: one specifically addressing trade issues, to be fast-tracked before the Council of the EU and the European Parliament; and another containing the non-trade provisions of the deal, which would require ratification by all EU Member States.⁹⁷

⁹² European Parliament, P9_TA(2023)0209, *Corporate Sustainability Due Diligence, Amendments adopted by the European Parliament on 1 June 2023 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM(2022)0071 – C9-0050/2022 – 2022/0051(COD)) (Ordinary legislative procedure: first reading)*, https://www.europarl.europa.eu/doceo/document/TA-9-2023-0209_EN.pdf.

⁹³ Assemblée Nationale. Proposition de résolution n°1173 (2023). Online: https://www.assemblee-nationale.fr/dyn/16/textes/l16b1173_proposition-resolution

⁹⁴ Reuters. Spain pushes to conclude Mercosur trade deal talks, France wants time (2023). Online: <https://www.reuters.com/markets/europe/spain-pushes-conclude-mercorsur-trade-deal-talks-france-wants-time-2023-10-20/>

⁹⁵ Brazil. Speech by President Luiz Inácio Lula da Silva at the opening of the European Union-Latin America Business Forum, in Brussels, Belgium (2023). Online: <https://www.gov.br/planalto/en/follow-the-government/speeches/speech-by-president-luiz-inacio-lula-da-silva-at-the-opening-of-the-eu-celac-business-summit-on-july-17-2023-in-brussels-belgium>

⁹⁶ White & Case. Mercosur and European Union Struggle to Finalize FTA Negotiations (2023). Online: <https://www.whitecase.com/insight-alert/mercorsur-trade-alert>

⁹⁷ Ibid.

Post-treaty mechanisms lie, therefore, at the heart of the current state of EU-Mercosur negotiations, which reinforces the need for timely legal analysis to help advance sustainability ambition in this process.

F. EU-New Zealand

New Zealand and the EU confirmed their commitment to start the process towards an FTA in October 2015. Joint scoping discussions subsequently commenced at the end of 2016 and were completed in March 2017. The scoping discussions addressed the Parties' shared ambition for the negotiations. Among the matters agreed were the objective for the Agreement to achieve an ambitious outcome on trade and sustainable development issues.⁹⁸

New Zealand and the EU formally launched negotiations in June 2018. Following twelve formal rounds, the substantial conclusion of the Agreement was announced in June 2022. For New Zealand, there was a noticeable shift in trade policy between October 2015, when the commitment to start the process towards an FTA was confirmed and June 2022 when the negotiations concluded. This shift included the approach to be taken vis-à-vis environment and trade.

The shift stemmed in large part from the public controversy that ensued following the conclusion of the Trans-Pacific Partnership (TPP) negotiations in 2015.⁹⁹ The TPP became a source of controversy due to several factors including opposition to the investor-state dispute settlement provisions, criticism over a lack of transparency during the negotiating process and a broader backlash against globalization.¹⁰⁰ In relation to environment, for example, a particular critique of the text was its failure to make any direct reference to climate change or the UNFCCC.¹⁰¹ The controversy led to widespread protests in New Zealand and perhaps most significantly, a breakdown in what had previously been bipartisan consensus between New

⁹⁸ New Zealand – European Union Free Trade Agreement, Outline of ambition and scope of future negotiations, <https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/EU-NZ-FTA-Scoping-Summary-and-Q-A-May-2017.pdf> (date accessed: 17 November 2023).

⁹⁹ The TPP was signed by: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Viet Nam. Following the election of President Donald Trump, the United States subsequently announced that it would not be ratifying the Agreement. The remaining countries came together to sign the renamed but substantively identical Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

¹⁰⁰ See for example: Jane Kelsey, "The TPPA: Treaty Making, Parliamentary Democracy, Regulatory Sovereignty and the Rule of Law" (Trans-Pacific Partnership Agreement, New Zealand Export Paper Series, Expert Paper #1).

¹⁰¹ See for example: [H.R.16~Rep. Steve Berry~Key Facts- Trans Pacific Partnership Agreement~4-21-2016.pdf](https://www.vermont.gov/files/legislative/H.R.16~Rep._Steve_Berry~Key_Facts-_Trans_Pacific_Partnership_Agreement~4-21-2016.pdf) (vermont.gov)

Zealand's main political parties on trade policy. When the TPP implementing legislation was introduced to the New Zealand Parliament in 2016, the opposition Labour Party opposed it due to concerns about the Agreement's potential impact on New Zealand domestic sovereignty.¹⁰²

There was a change of Government in 2017 and the new Labour-led Government subsequently sought to re-establish public support for trade – as well as develop a trade policy that they could support – by launching the 'Trade for All' process. This involved establishment of an independent Trade for All Advisory Board to conduct public consultations and provide recommendations for a trade policy agenda that would ensure that all New Zealanders benefit from trade and that trade policy supports sustainable and inclusive economic development.¹⁰³

One of the recommendations of the Trade for All Advisory Board was that the Government's Trade and Environment Framework be updated. This Framework was developed in 2001 and set out principles to inform and guide New Zealand's multilateral trade and environmental policy. Under the Framework, the Government was committed to "ensuring that its objectives for sustainable development are reflected in all its international obligations."¹⁰⁴ The Trade for All Advisory Board recommended updating the Framework, given environmental and political developments since 2001 and the significant advances in knowledge and understanding made over that time.

The Trade and Environment Framework was subsequently updated in 2021. In the updated version, climate change is addressed much more directly and often. It states that each FTA negotiation that the country engages in will "seek to reinforce multilateral environmental agreement member commitments, where appropriate and address environment and climate change issues." This is to be achieved in various ways, including through the "effective mechanisms for the resolution of any issues raised by the Parties to trade agreements over the operation of environment and climate change provisions or a failure to meet environment and

¹⁰² Richard Harman, "Labour confirms it will vote against TPP, 6 May 2016, www.politik.co.nz/labour-confirms-it-will-vote-against-tpp/ (date accessed: 20 November 2023). The Labour Party had been pro-trade in previous governments, with the Helen Clark-led government negotiating the New Zealand China FTA in 2008 and supporting further bilateral FTAs when in opposition.

¹⁰³ Trade For All Agenda, www.mfat.govt.nz/en/trade/nz-trade-policy/trade-for-all-agenda/ (date accessed 19 November 2023).

¹⁰⁴ See [Government issues new trade and environment framework | Beehive.govt.nz](http://www.beehive.govt.nz/government-issues-new-trade-and-environment-framework) (date accessed: 10 November 2023).

climate change obligations under the trade agreement, which may include recourse to the Dispute Settlement provisions of the Agreement.”¹⁰⁵

Consistent with the updated Framework, from early on in the EU-NZ FTA negotiations, New Zealand emphasized in its public reporting that its focus for the Trade and Sustainability provisions of the Agreement would be on seeking provisions that support trade and climate objectives.¹⁰⁶ The resulting EU NZ FTA takes climate change provisions a step further than any of New Zealand’s previous FTAs, many of which had been subject to criticism by environmental interests for only paying lip-service to environmental issues.¹⁰⁷

Chapter 19 (Trade and Sustainable Development) notes that the Parties “recognise that sustainable development encompasses economic development, social development and environmental protection, all three being inter-dependent and mutually reinforcing.”¹⁰⁸ The Parties further “affirm their commitment to promote the development of international trade and investment in a way that contributes to the objective of sustainable development.”¹⁰⁹ It has provisions specific to climate change; multilateral labour standards and agreements; trade and gender equality; trade and investment supporting sustainable development; trade and responsible business conduct and supply chain management; emissions trading; environmental goods and services; forestry management; and fossil fuel subsidies reform.

On the environmental dimension of sustainable development, the most notable advancement in this Chapter as compared to previous New Zealand FTAs lies in the Parties’ commitment in Article 19.6.2 to “effectively implement the UNFCCC and the Paris Agreement, including commitments with regard to Nationally Determined Contributions.” Pursuant to Article 19.6.3, this includes the “obligation to refrain from any action or omission which materially defeats the object and purpose of the Paris Agreement.”¹¹⁰

¹⁰⁵ Aotearoa New Zealand’s Trade and Labour Framework, <https://www.mfat.govt.nz/assets/Trade-General/Trade-policy/Aotearoa-New-Zealands-Trade-Environment-and-Climate-Change-Framework.pdf> (date accessed: 14 November 2023).

¹⁰⁶ EU-New Zealand Free Trade Agreement Negotiations: report on the third round of negotiations in Brussels, 18-22 February 2018, <https://www.mfat.govt.nz/assets/Trade-agreements/EU-NZ-FTA/EU-NZ-fta-Round-3-summary-report.pdf> (date accessed: 17 November 2023).

¹⁰⁷ See for example, Simon Terry, “The Environment under TPPA Governance” (Trans-Pacific Partnership Agreement, New Zealand Export Paper Series, Expert Paper #4).

¹⁰⁸ Article 19.1.2 EU-New Zealand Agreement.

¹⁰⁹ Ibid, Article 19.1.3.

¹¹⁰ Article 19.6.3 EU-New Zealand Agreement.

On the social and economic dimension, Article 19.3.1 of the EU-New Zealand Agreement affirms the Parties' "commitment to promote the development of international trade in a way that is conducive to decent work for all". Article 19.3.5 also requires the Parties to "make continued and sustained efforts to ratify the fundamental ILO Conventions if they have not yet done so".

A further innovation with this provision – for both New Zealand and the EU – is the application of dispute settlement. Articles 19.6.2 and 19.6.3 are both subject to dispute settlement, although there is only the possibility of the successful Party taking retaliatory action to force compliance in the event of a breach of Article 19.6.3 (i.e. where an action or omission has materially defeated the object and purpose of the Paris Agreement).

Article 19.5 sets out what has become a fairly standard provision in FTAs for both the EU and New Zealand, namely a requirement to cooperate. However, this provision is more detailed in its references to climate change and labour obligations than many of New Zealand's previous agreements.¹¹¹ On the environmental dimension of sustainable development, the Parties are required to "work together to strengthen their cooperation on trade-related aspects of climate change policies and measures bilaterally and regionally, including with third countries and in international fora, as appropriate."¹¹² This obligation to cooperate is also present in relation to labour practices: "Parties shall work together to strengthen their cooperation on trade-related aspects of labour measures and policies, bilaterally, regionally and in international fora, as appropriate, including in the ILO."¹¹³

Sustainable development is also reflected in a number of other provisions throughout the Agreement. One of the objectives of the Chapter on intellectual property – as set by Article 18.1(a) - is the "the production and commercialization of innovative and creative products between the Parties contributing to a more sustainable and inclusive economy for the Parties". This is also in line with Chapter 13 (Energy and Raw Materials), which includes the objective to "facilitate trade and investment between the Parties to promote, develop and increase energy generation from renewable sources and the sustainable production of raw materials, including through the use of green technologies".¹¹⁴ In addition, Article 14.2.5 in Chapter 14 (Public

¹¹¹ The other more recent FTA that has dealt in some detail with climate change is the New Zealand-United Kingdom FTA, signed in 2021.

¹¹² Article 19.6.5 EU-New Zealand Agreement.

¹¹³ Ibid, Article 19.3.11.

¹¹⁴ Ibid, Article 13.1.

Procurement) says that a Party may allow procuring entities to take into account environmental, social and labour considerations related to the object of the procurement.

On the social dimension of sustainable development, the EU-New Zealand Agreement also includes a whole chapter on “Māori trade and economic cooperation”.¹¹⁵ The Parties recognize the “importance of international trade in enabling and advancing Māori wellbeing and the challenges that may exist for Māori in accessing the trade and investment opportunities derived from international trade”.¹¹⁶ This “wellbeing” is defined – from a te ao Māori perspective – as the “the balancing and interconnection of numerous factors required for individuals and groups to be truly well and thrive; including taha tinana (body), taha hinengaro (mind), taha wairua (spirit), whenua (land), whakapapa (genealogy) and kaitiakitanga (stewardship); the term “wellbeing” can also include environmental, economic and cultural aspects”.¹¹⁷

On the environmental dimension of sustainable development, the Parties agreed to strengthen their cooperation on trade-related aspects of fossil fuel subsidy policies and measures bilaterally and in international fora. They also agreed to work together and encourage other WTO Members to advance reform and pursue new fossil fuel subsidy disciplines in the WTO.¹¹⁸ Cooperation requirements in relation to forestry, including on the role of forests and wood-based products in climate change mitigation and the circular and bioeconomies,¹¹⁹ and in relation to sustainable food systems, where topics include regenerative farming, the impacts of food production on biodiversity and consumers’ carbon footprints.¹²⁰ The Parties committed to eliminate customs duties on each other’s environmental goods. It is explicitly noted that such goods “contribute to achieving environmental and climate goals by preventing, limiting, minimizing or remediating environmental damage to water, air and soil and by contributing to the dissemination of technologies that serve to mitigate climate change.”¹²¹

There were several factors leading the EU to adopt this type of approach, including political, academic and civil society criticism of its previous, more collaborative, approach to

¹¹⁵ Ibid, Chapter 20.

¹¹⁶ Ibid, Article 20.2.2.

¹¹⁷ Ibid, Article 20.1(g).

¹¹⁸ Ibid, Article 19.7.4.

¹¹⁹ Ibid, Article 19.9.4.

¹²⁰ Ibid, Chapter 7 (Sustainable food systems).

¹²¹ See Arts. 2.5 (Elimination of customs duties) and 19.11.2 (Trade and investment supporting sustainable development).

policy developments as part of and related to the Green Deal.¹²² As the Secretary-Treasurer of the International Bar Association International Trade and Customs Committee has stated, however, “It’s interesting that the EU used the New Zealand FTA as the first [such agreement] to include the binding requirements—it’s not surprising, it’s easiest to reach an agreement with New Zealand because of who New Zealand is.”¹²³ In this regard, it is highly likely that New Zealand’s stated ambition with respect to trade and sustainable development contributed directly to the outcome on climate. That outcome may not be perfect from a climate perspective – the Parties did not, for example, agree to prohibit fossil fuel subsidies – but it does take a step forward in terms of precedent in that both Parties are agreeing to hold themselves accountable to the other regarding their Paris commitments.¹²⁴ In this respect, the application of dispute settlement is notable and a real shift in approach for both New Zealand and the EU.¹²⁵

3. Legal Impact of Post-Treaty Actions

The present section will examine the legal relevance of the various post-treaty actions taken within the ambit of an FTA, jointly or separately by the parties. First, the difference between formal amendments and other instruments that do not change the actual text of the treaty will be clarified. The latter will be part of the analysis in part C to examine their legal relevance as interpretive tools.

When referring to amendments here an examination of both formal agreements that amend a treaty as well as any other type of agreement (such as decisions of an FTA institution) will be conducted.¹²⁶ Generally, amendments have the same legal status as formal international

¹²² Carlotta Ceretelli, “EU-New Zealand FTA: Towards a new approach in the enforcement of trade and sustainable development obligations”, 28 September 2022, EJIL:Talk! w.ejiltalk.org/eu-new-zealand-fta-towards-a-new-approach-in-the-enforcement-of-trade-and-sustainable-development-obligations/ (date accessed: 20 November 2023).

¹²³ Cited in Emily Benson and Elizabeth Duncan, “Small Country, Big Climate Agenda: New Zealand’s Approach to Climate and Trade” (Center for Strategic and International Studies, 30 August 2022), <https://www.csis.org/analysis/small-country-big-climate-agenda-new-zealands-approach-climate-and-trade>, date accessed: 14 November 2023.

¹²⁴ John Ballingall, “Sustainability and the New Zealand-EU Free Trade Agreement: A step up in accountability”, IISD Policy Analysis, 15 January 2023.

¹²⁵ Technically we should refer to the Vienna Convention on the Law of Treaties Between States and International Organizations or Between International Organizations (1986), however, the EU and the CJEU apply the VCLT with regards to EU treaties (*Opinion 2/15 of the Court: Free Trade Agreement between the European Union and the Republic of Singapore (Full Court)* No. 2/15 161 (ECJ 16062017). Still, the relevant provisions for treaty interpretation

¹²⁶ The lack of precise difference on bilateral relations is analyzed here: Malgosia Fitzmaurice and Panos Merkouris (eds), ‘Amendment/Modification/Revision of Treaties: Motion as Change’ in *Treaties in Motion: The Evolution of Treaties from*

treaties, in terms of their binding legal nature.¹²⁷ However, they are not required to have all the procedures linked with the conclusion and the entry into force of a treaty as required by the VCLT.¹²⁸

Here, the term “joint declarations” refers to all pre- and post-entry into force instruments that FTA institutions and the FTA parties themselves issue. However, the universe of such types of instruments is vast; hence, the term ‘joint declarations’ will be used rather loosely and, when needed, their precise name and legal operation shall be specified. One particular interesting difference is whether the declaration was issued by FTA bodies or the FTA parties themselves.¹²⁹ Second, is whether the declaration was issued before or after the treaty's conclusion and its entry into force. These two aspects will further be addressed later in this section.

Joint declarations are differentiated from unilateral declarations, which include all instruments published and shared by either one of the parties during the negotiations or after the conclusion of the treaty and its entry into force. Their relevance depends, inter alia, on their temporal introduction as well as the treatment of those instruments by the counterparties.¹³⁰

A. Difference between amendments and other instruments

The actions examined here, such as ‘joint declarations,’ ‘decisions,’ and ‘interpretative statements,’ should be distinguished from formal amendments of an FTA. In the latter case, the parties agree to alter the legal obligations of the FTA. The amendment process either under the VCLT (which applies customary international law)¹³¹ or under the specific FTA rules, is usually formal and requires acceptance by both parties to the FTA.

Formation to Termination (Cambridge Studies in International and Comparative Law, Cambridge University Press 2020). However according to the ILC ‘It is presumed that the parties to a treaty, by an agreement or a practice in the application of the treaty, intend to interpret the treaty, not to amend or to modify it.’ ILC, ‘Report of the International Law Commission on the Work of Its 68th Session’ (2 May–10 June and 4 July–12 August 2016) UN Doc A/71/10, 121, 173–80 (Commentary to Draft Conclusion 7(3)).

¹²⁷ See Article 39 of the VCLT.

¹²⁸ Obendahl Kerstin, ‘Article 39. General Rule Regarding the Amendment of Treaties’ in Oliver Dörr and Kirsten Schmalenbach (eds), *Vienna Convention on the Law of Treaties* (Springer Berlin Heidelberg 2012) 702–03; Philippe Sands, ‘Article 39’ in Olivier Corten and Pierre Klein (eds), *The Vienna Conventions on the Law of Treaties: a commentary* (Oxford commentaries on international law, Oxford Univ Press 2011) 971–72; Fitzmaurice and Merkouris (n 120).

¹²⁹ As we will explain below, instruments by FTA parties as *ipso facto* relevant for treaty interpretation, while instruments issued by FTA bodies have a variable relevance, depending on the precise instruments, body and treaty text.

¹³⁰ See more in IV[2].

¹³¹ See Article 40, ‘Vienna Convention on the Law of Treaties’ (23.05.1969) vol 1155.

As an example of the latter, Articles 330 and 334 of the EU-Andean Communities require that amendments follow the same procedural avenue for entering into force as the original treaty, i.e. internal procedures and ratification. The EU-Central America FTA is more explicit on this, stating:

2. The Parties may also agree on any other amendment of this Agreement.
3. All the above-mentioned amendments and agreements shall be approved in accordance with each Party's internal legal procedures.¹³²

The EU-Chile FTA (2002), which will be replaced by the recently concluded EU-Chile Agreement,¹³³ did not provide for institutional or procedural rules on amendments.¹³⁴ Hence, the amendment process would be required to go through the criteria of the VCLT.¹³⁵ The recent EU-Chile FTA explicitly requires that any amendment follows the requirements of the formal entry into force of the Agreement.¹³⁶

Formal amendments to the treaty text should be contrasted with decisions taken by the various FTA Committees that are usually considered as interpretive tools. In some situations, this is explicitly recognized. Footnote 4 of the EU-Andean Community, for example, provides that:

Interpretations adopted by the Trade Committee shall not constitute an amendment or modification to the provisions of this Agreement.¹³⁷

Of course, this distinction between formal amendments and decisions that do not constitute an amendment requires a case-specific analysis, depending on the applicable FTA. For instance, according to Article 33.1.6, the Trade Council of the new EU-Chile FTA has the capacity to adopt amendments over specific issues (e.g. government procurement) and to adopt decisions to issue binding interpretations of the provisions of the FTA.¹³⁸ Amendments

¹³² Article 358, 'Agreement Establishing an Association between the European Union and Its Member States, on the One Hand and Central America on the Other' (15.12.2012) vol OJ L 346.

¹³³ See Article 33.11.1 'European Union-Chile Advanced Framework Agreement (Interim Agreement)' [2022].

¹³⁴ 'Agreement Establishing an Association between the European Community and Its Member States, of the One Part and the Republic of Chile, of the Other Part' (30.12.2002) vol 352.

¹³⁵ Sands (n 122) 970.

¹³⁶ Article 33.9, 'European Union-Chile Advanced Framework Agreement (Interim Agreement)' (n 127).

¹³⁷ Footnote 4, Article 13.2.e EU-Andes Agreement.

¹³⁸ Article 33.1.6(b) EU-Chile Agreement.

over issues not covered by Article 33.1.6 will have to go through the formal processes, set down by the VCLT. A similar approach is taken in the Draft EU-Mexico FTA.¹³⁹

In contrast, FTA Committees usually have the capacity to recommend amendments,¹⁴⁰ that are then adopted through the official amendment procedures. That is, the FTA Committees have recommendation powers, the amendment itself must follow the procedures for such a change. This is the case in the Comprehensive Economic and Trade Agreement (CETA):

The Committee on Trade and Sustainable Development may recommend to the CETA Joint Committee modifications to relevant provisions of this Chapter, in accordance with the amendment procedures established in Article 30.2 (Amendments).¹⁴¹

The CETA Joint Committee in general may consider and agree on an amendment.¹⁴² However, agreeing to such an amendment may be relevant as an interpretive tool, as examined in the next sub-section, yet it is not formally an amendment. Indeed, according to Article 30.2 of CETA, a formal amendment enters into force via the formal proceedings (internal requirements etc.).¹⁴³ Article 30.2(2) requires the parties to approve the Joint Council decision and follow the formal amendment requirements.¹⁴⁴ In other words, a formal amendment to CETA still requires the formal procedures.

Thus, formal amendments are rare and rather strenuous. Consequently, there is an incentive to adopt more flexible approaches that are still legally relevant but do not reach the level of an amendment. It is precisely this rather strict approach on amendments that has led to the re-negotiation of new agreements in Chile and Mexico cases, instead of amending the existing ones. In other words, given the greater onus on the parties to engage in a formal

¹³⁹ Draft Section on Administrative and Institutional Provisions/Specific Tasks in Trade Matters of the Bodies Established under this Agreement, Article X.1 Specific Functions/Tasks of the Joint Council

¹⁴⁰ See for instance Article 24.2(d) EU-New Zealand Agreement.

¹⁴¹ Article 23.11, 'Comprehensive Economic and Trade Agreement (CETA) between Canada, of the One Part and the European Union and Its Member States, of the Other Part' (14.01.2017) vol 11.

¹⁴² Article 26.5 CETA.

¹⁴³ Article 30.2.1 reads: 1. The Parties may agree, in writing, to amend this Agreement. An amendment shall enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable internal requirements and procedures necessary for the entry into force of the amendment or on the date agreed by the Parties.

¹⁴⁴ It reads "2. Notwithstanding paragraph 1, the CETA Joint Committee may decide to amend the protocols and annexes of this Agreement. The Parties may approve the CETA Joint Committee's decision in accordance with their respective internal requirements and procedures necessary for the entry into force of the amendment. The decision shall enter into force on a date agreed by the Parties. This procedure shall not apply to amendments to Annexes I, II and III and to amendments to the annexes of Chapters Eight (Investment), Nine (Cross-Border Trade in Services), Ten (Temporary Entry and Stay of Natural Persons for Business Purposes) and Thirteen (Financial Services), except for Annex 10-A (List of Contact Points of the Member States of the European Union)."

amendment, parties have resorted to new agreements that still have legal weight, albeit not considered a formal amendment.

B. Examples of Amendments

The clearer examples of amendments to EU FTAs have been those accepting a new Member to the FTA. In the case of the agreement between the EU-Colombia-Ecuador-Peru FTA, it was initially meant to be subscribed between the EU and the Andean Community. In 2013, the impossibility of agreeing with the entire membership of the Andean Community led to a provisional implementation by the EU on one side and two Andean countries – Colombia and Peru- on the other.¹⁴⁵ The agreement was amended for Ecuador, which joined later in 2017,¹⁴⁶ and through its Article 329, is open for Bolivia's accession in the future.¹⁴⁷ The same occurred in the EU-Chile Agreement (2003), which was amended via an official protocol due to the expansion of the EU.¹⁴⁸

Other amendment examples come from Agreements' Trade Committee decisions. As of December 2022, the EU-Colombia-Ecuador-Peru agreement has been amended five times due to Trade Committee decisions, the latest of which was in November 2022.¹⁴⁹ These amendments mainly consider incorporating government procurement agencies to the list provided and including new geographical indications. However, no amendments concerning the environment or climate change action have been made.

Another example concerns the EU-Japan Economic Partnership Agreement (EPA), which is formally being amended to include the provisions of the EU-Japan Cross-Border Data Flows

¹⁴⁵ Schade, D. (2020). *The EU in Association Agreement Negotiations: Challenges to Complex Policy Coordination*. London: Routledge; Cáceres, J., & Delev, C. (2023). Where to Next? Modernizing Environmental Commitments in EU-Latin America Free Trade Agreements. *Legal Issues of Economic Integration*, 50(3).

¹⁴⁶ Protocol of Accession to the Trade Agreement between the European Union and its Member States, of the one part and Colombia and Peru, of the other part, to take account of the accession of Ecuador

¹⁴⁷ Cáceres, J., & Delev, C. (2023). Where to Next? Modernizing Environmental Commitments in EU-Latin America Free Trade Agreements. *Legal Issues of Economic Integration*, 50(3).

¹⁴⁸ Additional Protocol to the Agreement between the European Community and its Member States, of the one part and the Republic of Chile, of the other part, to take account of the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union

¹⁴⁹ In 2018 due to Decision No 1/2017 of the EU-Colombia-Peru Trade Committee of 24 November 2017. In 2019 due to Decision No 1/2018 of the Trade Committee of 13 December 2018. In February 2021, due to Decision No 1/2020 of the Trade Committee of 19 November 2020. In June 2021, due to Decision No 1/2021 of the EU-Colombia-Peru-Ecuador Trade Committee of 17 May 2021. In December 2022 due to Decisions No 1/2022 of the Trade Committee of 16 November 2022; Decision No 2/2022 of the Trade Committee of 16 November 2022; and Decision No 3/2022 of the Trade Committee of 16 November 2022.

Agreement.¹⁵⁰ The amendment will enter into force after the mutual ratification of the instrument in accordance with domestic procedures. Notably, the original EU-Japan EPA explicitly provided for this amendment process by noting that “[t]he Parties shall reassess within three years of the date of entry into force of this Agreement the need for inclusion of provisions on the free flow of data into this Agreement.” This example comes to corroborate a widespread understanding within the EU Commission,¹⁵¹ that amendments are not well-suited to adapt an FTA to emerging trends of environmental commitments, since many of these agreements do not have explicitly recognized climate change and related goals as part of their subject-matter. Therefore, the Commission prefers negotiating a new treaty with different treaty language instead of adding amendments.

C. Interpretive value of non-amendment declarations

The following section will examine the different interpretive tools as provided in the VCLT, where joint and unilateral declarations could be examined.

Article 31 of the VCLT sets forth the main rule of treaty interpretation, followed by Article 32 which provides supplementary means of interpretation. The main rule of interpretation under the VCLT encompasses different tools for deriving the meaning of a treaty, namely by considering the text, context and object and purpose of the treaty.

The provisions provide as follows:

Article 31. GENERAL RULE OF INTERPRETATION

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
 - (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

¹⁵⁰ The text formally recognized as Protocol can be found here: <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/f9c7b4f0-ea0f-467a-bb9e-208013b07312/details?download=true>

¹⁵¹ Bilateral discussions with members of the European Commission have been held by the research team during COP 28 and MC13 on the matter.

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32. SUPPLEMENTARY MEANS OF INTERPRETATION

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31 or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or

(b) leads to a result which is manifestly absurd or unreasonable.

1. Article 31 VCLT

Article 31 of the VCLT sets forth the “general rule” of treaty interpretation and specifies the tools interpreters should use when deriving the meaning of treaty terms. In essence, Article 31 provides that the terms of a treaty shall be interpreted in good faith in accordance with the ordinary meaning in the context and in light of the treaty’s object and purpose.

The fact that Article 31 is entitled the general “rule,” in the singular, illustrates that there is a single interpretative process.¹⁵² Hence, the different interpretative elements listed in Article 31 shall be considered holistically and in unity as a single combined operation and a closely integrated rule, as opposed to being mechanically subdivided into rigid components.¹⁵³ Practically, interpreters should consider all the different elements of the general rule without giving preference to one over the other, nor should they examine these elements in a specific

¹⁵² This process was described as a “crucible approach” by the International Law Commissions’ Special Rapporteur Humphrey Waldock where by “All the various elements, as they were present in any given case, would be thrown into the crucible and their interaction would give the legally relevant interpretation.”, see [United Nations Conference on the Law of Treaties: Official Records: Documents of the Conference](#), 2 Y.B. Int’l L. Comm’n 219–20, para. 8 (1966)

¹⁵³ ILC Draft Articles on the Law of Treaties with Commentaries, Article 27, para. 11.

order. The Appellate Body has accurately stated that the process of treaty interpretation under Arts. 31 and 32 is a “holistic” and “integrated operation”:

The principles of interpretation that are set out in Articles 31 and 32 are to be followed in a holistic fashion. The interpretative exercise is engaged so as to yield an interpretation that is harmonious and coherent and fits comfortably in the treaty as a whole so as to render the treaty provision legally effective. A word or term may have more than one meaning or shade of meaning, but the identification of such meanings in isolation only commences the process of interpretation, it does not conclude it ... [A] treaty interpreter is required to have recourse to context and object and purpose to elucidate the relevant meaning of the word or term. This logical progression provides a framework for proper interpretative analysis. At the same time, it should be kept in mind that treaty interpretation is an integrated operation, where interpretative rules or principles must be understood and applied as connected and mutually reinforcing components of a holistic exercise.¹⁵⁴

Hence, the value of each of the tools examined in the following section is primarily equal; however, their probative value will depend on the precise instruments, its wording and its circumstances of introduction.

a) Article 31.1: Context

The first interpretative element, presently examined under Article 31 of the VCLT, is “context”, which can be divided between *immediate* and *broader* context. In relation to the immediate context, the term's ordinary meaning at issue must be examined in light of the position in the treaty (i.e. chapter, section), its relationship to other provisions and the general legal system in which the term is situated.¹⁵⁵ This examination also focuses on punctuation, syntax and grammar.¹⁵⁶

In turn, the broader context concerns any other agreement, instrument, rule or practice between the parties. Paragraphs 2 and 3 of Article 31 confirm that an interpretation should take into account these factors (see below). Broader context includes all annexes,

¹⁵⁴ Appellate Body Report, *US – Continued Zeroing*, para. 268.

¹⁵⁵ See, e.g., Appellate Body Report, *US – Shrimp*, para. 116.

¹⁵⁶ Richard Gardiner, *Treaty Interpretation* (Oxford University Press 2015) 199–210.

chapters and sections of an Agreement. For instance, the TSD chapter and its provisions constitute the relevant context for Trade in Goods provisions.¹⁵⁷

However, the precise probative value varies. The Panel in the *EU-Ukraine Wood* case – which occurred within the context of the EU-Ukraine Association Agreement – considered that provisions that have “a ‘promotional’ or ‘programmatic’ nature”, i.e. “they may not give rise to immediate and precise obligations,” are mostly relevant to examine exceptions such as the general exception.¹⁵⁸ These may provide further policy space for states when examining the ‘necessity’ of a measure.¹⁵⁹ To the contrary, provisions that “contain detailed, specific, compulsory rule” may be more influential. Consequently, the nature of the substantive obligations of the instrument is highly influential both in terms of the rights and obligations conferred and to its interpretive relevance for the rest of the agreement.

Overall, the broader context covers all integral parts of the agreement. Hence, if an FTA provision explicitly considers a side-letter, declaration or any other instrument as an integral part of the Agreement, it is considered broader context under Article 31.1 of the VCLT.

For instance, Article 30.1 of the CPTPP considers that the Annexes, Appendices and footnotes are an integral part of the Agreement. This, however, does not include the so-called ‘side letters’ signed between the CPTPP parties on a bilateral basis. In turn, the EU-Mercosur Declarations submitted by the parties may be considered as context only if the parties include it as an Annex or other integral part of the Agreement.¹⁶⁰ This was the case with the EU-Mexico Global Agreement, whose Article 53 provided that “[t]he Final Act contains the Joint and Unilateral Declarations made at the signature of this Agreement.” Hence, the declaration

¹⁵⁷ *Restrictions applied by Ukraine on exports of certain wood products to the European Union (Final Report)* para 245 (Arbitration Panel pursuant to Article 307 EU-Ukraine Association Agreement). Similar argument for investment provisions in Markus Gehring and Marios Tokas, ‘Synergies and Approaches to Climate Change in International Investment Agreements: Comparative Analysis of Investment Liberalization and Investment Protection Provisions in European Union Agreements’ (2022) 23 *The Journal of World Investment & Trade* 5–6, 778.

¹⁵⁸ *Restrictions applied by Ukraine on exports of certain wood products to the European Union (Final Report)* para 250 (Arbitration Panel pursuant to Article 307 EU-Ukraine Association Agreement 11122020); Mariia Shulha and Anzhela Makhinova, ‘The Arbitration Panel Ruling on Ukraine’s Certain Wood Restrictions under the EU-UA Association Agreement’ (2021) 16 *Global Trade and Customs Journal* 7/8.

¹⁵⁹ *Restrictions applied by Ukraine on exports of certain wood products to the European Union (Final Report)* (n 41) para 232..

¹⁶⁰ See the ‘Joint’ Instrument leaked by the EU side [<https://friendsoftheearth.eu/wp-content/uploads/2023/03/LEAK-joint-instrument-EU-Mercosur.pdf>] as well as the news on the reaction by the Mercosur side [<https://www.reuters.com/article/eu-mercosur-trade-idINL1N3BB1K0>]

signed by the parties (unilateral or jointly)¹⁶¹ was considered an integral part of the Final Act and the Agreement.

b) Article 31.2 of the VCLT

Article 31.2 concerns the broader context that needs to be taken into account when interpreting treaties. It refers to two types of documents that are extrinsic to the treaty, as they do not constitute an integral part of the treaty, but which may need to be examined as part of the contextual analysis.¹⁶² The first type is the agreements between the parties to the main treaty, which may take the form of final acts, understandings, commentaries or explanatory reports.¹⁶³ The second type includes unilateral instruments in the form of unilateral interpretive declarations, unilateral acts and other instruments. These instruments need to be accepted (explicitly or tacitly) by all parties as a genuine reflection of their consent to be bound.¹⁶⁴

The parties themselves were not required to prepare the documents. The Appellate Body has found that “*authorship by a delegated body would not preclude specific documents from falling within the scope of Article 31(2).*”¹⁶⁵ There must, however, exist a temporal proximity of the documents with the time of the conclusion of the treaty, as required by the VCLT. Specifically, the documents must have been made in “connection” with the conclusion of the treaty, as per Article 31.2(b) of the VCLT. It is even possible that agreements on interpretation are adopted subsequent to the adoption of the treaty text. In any case, the decisive criterion as to whether such documents should be taken into account in the contextual interpretation is whether the agreement or acceptance of the instrument was made in connection with the act that constituted the essential basis of consent.

¹⁶¹ E.g., Joint Declaration I concerning full cumulation pursuant to Article 2 of Annex III and Joint Declaration II relating to Article 2 of Annex III.

¹⁶² Gardiner (n 150) 223; Oliver Dörr, ‘Article 31. General Rule of Interpretation’ in Oliver Dörr and Kirsten Schmalenbach (eds), *Vienna Convention on the Law of Treaties: A Commentary* (Springer 2012) 588.; and Dörr and Schmalenbach, *supra* note 17, p. 588.

¹⁶³ Dörr (n 156) 589.

¹⁶⁴ *Ibid.*, p. 552.

¹⁶⁵ Appellate Body Report, *US – Gambling*, para. 175.

Two examples illustrate this particular feature. For instance, the EU-Chile Joint Declarations that were signed on a very close temporal connection with the conclusion of the treaty.¹⁶⁶ The Joint Declaration on Investment Protection explicitly provides:

The European Union and its Member States and Chile make the following Joint Interpretative Declaration at the time of signature of the Investment Protection Agreement between them.

Similarly, the various side-letters of the CPTPP constitutes such agreements in connection with the conclusion of the Treaty (or accession).¹⁶⁷ The interesting element is that these letters are bilaterally signed, even though the CPTPP in general is plurilateral. However, the rest of the parties agree tacitly to this practice;¹⁶⁸ hence, rendering these side-letters as an agreement between all the parties (some explicitly, i.e. the signatories to the letters and the rest tacitly).

Moreover, since the realm of context under Article 31.2 is potentially broad, the Appellate Body has found that only documents relevant to the interpretation at hand should be taken into account. The document must be able to shed light on the interpretative issue to be resolved:

[F]or a particular provision, agreement or instrument to serve as relevant context in any given situation, it must not only fall within the scope of the formal boundaries identified in Article 31(2), it must also have some pertinence to the language being interpreted that renders it capable of helping the interpreter to determine the meaning of such language.¹⁶⁹

For example, the Appellate Body has considered that the Harmonized System (HS) is a relevant agreement under Article 31.2 of the VCLT for the purposes of interpreting Members' good schedules.¹⁷⁰ This was found based on the following criteria: (i) the HS membership

¹⁶⁶ Joint Statement on Trade and Sustainable Development by The European Union And Chile; Joint Interpretative Declaration On The Investment Protection Agreement Between Chile And The European Union And Its Member States.

¹⁶⁷ 'Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)' (08.03.2018). The Collection of side letters can be found in the websites of the various countries (e.g., Australia: <https://www.dfat.gov.au/trade/agreements/in-force/cptpp/official-documents>)

¹⁶⁸ For more on state silence and its role on various aspects of international law, see Danae Azarea, *State Silence as Acceptance: A Presumption and an Exception* (June 30, 2023). British Yearbook of International Law, Faculty of Laws University College London Law Research Paper No. 15/2023, Available at SSRN: <https://ssrn.com/abstract=4537590>; Dane Azaria, *The Conditions for Inferring a 'Dispute' from State Silence* (August 10, 2023). Faculty of Laws University College London Law Research Paper No. 14/2023.

¹⁶⁹ Appellate Body Reports, *China – Automobile Parts*, para. 151.

¹⁷⁰ Appellate Body Report, *EC – Chicken Cuts*, para. 199.

includes the vast majority of WTO Members;¹⁷¹ (ii) the HS was used as the basis for the (GATT) 1994 schedules during the Uruguay Round; (iii) the HS was officially adopted during the negotiating rounds; and (iv) the WTO covered agreements make specific reference to the HS. On this basis, the Appellate Body concluded that:

[P]rior to, during, as well as after the Uruguay Round negotiations, there was broad consensus among the GATT Contracting Parties to use the Harmonized System as the basis for their WTO Schedules, notably with respect to agricultural products. In our view, this consensus constitutes an "agreement" between WTO Members "relating to" the WTO Agreement that was "made in connection with the conclusion of" that Agreement, within the meaning of Article 31(2)(a) of the Vienna Convention."¹⁷²

Finally, the instruments under Article 31.2 should be distinguished from the instruments covered by Article 32 of the VCLT.¹⁷³ The instruments connected with the treaty's conclusion yet unrelated to the treaty itself are classified under Article 31.2 of the VCLT. They do not refer to the preparatory or negotiation stages of the treaty, but rather with the existence of the treaty consensus such as declarations that are adopted as part of the final treaty.

In contrast, the instruments referred to in Article 32 are linked to the *travaux* of the treaty and its negotiating history. For example, the International Court of Justice (ICJ) has considered that minutes of a conference of the parties that summarize the discussions that led to the adoption of the treaty at hand fell under Article 32, as reflecting the negotiating history and the preparatory works.¹⁷⁴ Similarly, the EU-CELAC Summit Declarations of 2023 cannot be considered under Article 31.2 as they were not temporarily linked to the conclusion of a treaty. They could be considered under Article 32 (more on that later).

¹⁷¹ Note that there have two other instances where a WTO panel considered that "parties" present in Article 31.3(c) of the VCLT meant all members of the WTO, as opposed to just a fraction of them. See Panel Report, *EC-Biotech*, para. 7.68 and Panel Report, *India – Tariff Treatment on Certain Goods in the Information and Communications Technology Sector*, WT/DS582/R and Add.1, circulated to WTO Members 17 April 2023, appealed on 8 December 2023, para. 7.36-7.46.

¹⁷² Appellate Body Report, *EC – Chicken Cuts*, para. 199.

¹⁷³ Gardiner (n 150).

¹⁷⁴ *Maritime Dispute (Peru v. Chile)*, Judgment, ICJ Reports 2014, para 65.

The distinction between Arts. 31.2 and 32 is important since the instruments of Article 31.2 are an integral part of the general rule of interpretation, while the instruments of Article 32 are only examined as supplementary means of interpretation.

c) Article 31.3 of the VCLT

Article 31.3 of the VCLT also concerns the broader context that needs to be considered when interpreting treaties. It refers to three elements extrinsic to the treaty, namely subsequent agreements, practices or other relevant rule of international law. These are elements that were introduced after the conclusion of the main treaty at issue and which relate to “the interpretation of the treaty or the application of its provisions.”

(a) Article 31.3(a) – Subsequent Agreement

The parties to a treaty are able to change the understanding of a treaty provision by agreeing on its specific interpretation in a subsequent agreement. Such agreement would represent an authentic means of interpreting the treaty. For example, the International Law Commission (ILC) concluded in its 2018 Report on Subsequent Practices and Agreements that:

Subsequent agreements and subsequent practice under article 31, paragraph 3 (a) and (b), being objective evidence of the understanding of the parties as to the meaning of the treaty, are authentic means of interpretation, in the application of the general rule of treaty interpretation reflected in article 31.¹⁷⁵

The subsequent agreement is not required to take any formal form; it must only have been reached between all the parties to the treaty. In *Methanex v. US*, an investor-state arbitration case, the tribunal found that an interpretative note by the Free Trade Commission of the North American Free Trade Agreement (NAFTA) constituted a subsequent agreement.¹⁷⁶ In fact, even unwritten agreements are covered by Article 31.3(a).¹⁷⁷

However, the Tribunal in *Bay of Bengal Maritime Boundary Arbitration*, a case brought under ambit of Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS), was cautious to rely overly on certain exchanges of letters to guide its interpretation of the treaty. The Tribunal considered that the informal character of the alleged subsequent

¹⁷⁵ International Law Commission, ‘Draft Conclusions on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties’ (Yearbook of the International Law Commission, 2018, vol. II, Part Two, 2018) 188–89.

¹⁷⁶ *Methanex Corporation v. United States of America*, UNCITRAL, Final Award, 3 August 2005, para. 20.

¹⁷⁷ *Kasikili/Sedudu Island (Botswana v. Namibia)*, Judgment, ICJ Reports 1999, para. 63.

agreement had to be balanced against the formality of the treaty at hand.¹⁷⁸ Even if there is no specific form requirement under Article 31.3(a) of the VCLT, the Tribunal found that a brief exchange of correspondence between certain civil servants could not have a significant bearing on the formal treaty.¹⁷⁹

Even if there is insufficient evidence to demonstrate a subsequent *agreement*, there can nonetheless be enough to establish that there was a subsequent *practice*. This was the outcome in *CCFT v. United States*, an investor-state dispute under NAFTA, where the Tribunal considered there was “*insufficient evidence on the record to demonstrate a ‘subsequent agreement’*,” but that there was a subsequent practice because there was “*evidence of a sequence of facts and acts that amounts to a practice is concordant, common and consistent.*”¹⁸⁰

The absence of a particular requirement of form is reiterated by the fact that treaty organs' decisions may be considered subsequent agreements. Again, the crux of the analysis is whether all Parties reach the decision unanimously or that the contracting parties that did not vote have at least implicitly accepted the decisions.

The Appellate Body reiterated the aforementioned rationale – in the context of the *US – Clove Cigarettes* dispute – when examining whether the Doha Ministerial Decision constituted a subsequent agreement on interpreting or applying the term “reasonable interval” in Article 2.12 of the Technical Barriers to Trade (TBT) Agreement. It noted there is no form requirement under Article 31.3(a) of the VCLT because the term “agreement” refers “*fundamentally, to substance rather than to form,*” and found that the Doha Ministerial Decision could be characterized as a subsequent agreement because “*it clearly expresses a common understanding and an acceptance of that understanding among Members.*”¹⁸¹

A similar finding was made in *US – Tuna II (Mexico)* in respect of a decision by the TBT Committee. In particular, the Appellate Body noted that:

¹⁷⁸ *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India (Bangladesh v India)*, Award (Case No 2010-16) 7 July 2014, para. 165.

¹⁷⁹ *Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India (Bangladesh v India)*, Award (Case No 2010-16) 7 July 2014, para. 165.

¹⁸⁰ *C.C.F.T. v. United States*, UNCITRAL Arbitration under NAFTA Chapter Eleven, Award on Jurisdiction, 28 January 2008, paras. 188-189.

¹⁸¹ Appellate Body Report, *US – Clove Cigarettes*, para. 267.

[T]he Decision was adopted by the TBT Committee in the context of the Second Triennial Review of the Operation and Implementation of the TBT Agreement, which took place in the year 2000. It was thus adopted subsequent to the conclusion of the TBT Agreement. We further note that the membership of the TBT Committee comprises all WTO Members and that the Decision was adopted by consensus.¹⁸²

On the other hand, other WTO panels have been reluctant to adamantly affirm that Committee Decisions can be sorted as “subsequent agreements.” For instance, the Panel in *US-Poultry (China)* noted that an SPS Committee decision is “*not binding and does not determine the scope of Article 4*”, but also that it “*expands on the Members' own understanding of how Article 4 relates to the rest of the SPS Agreement and how it is to be implemented.*”¹⁸³ In other words, even when Panels have not affirmed categorically that Committee decisions are “subsequent agreements,” they have nonetheless considered them as such in a *de facto* manner.

There are also examples from the ICJ, such as the *Whaling* case concerning the International Convention for the Regulation of Whaling where the court considered that certain non-binding recommendations by the treaty commission constituted subsequent agreements when “adopted by consensus or unanimous vote,” but not the commission’s recommendatory resolutions or guidelines which were adopted without the support of all treaty states.¹⁸⁴

Further, the subsequent agreement needs to be relevant to the main treaty. A sufficient relationship must exist between the two in order for the subsequent agreement to be seen as providing interpretative evidence.¹⁸⁵ The ICJ case illustrates this in *Jan Mayen*, where Denmark and Norway had signed an Agreement on Delimitation of their continental shelves in 1965. The question before the court was whether an agreement between the parties signed in 1979 regarding the delimitation of the continental shelf in the area between the Faroe Islands and Norway constituted a subsequent agreement for determining the median line. The Court found that this was not the case because the 1979 agreement made no

¹⁸² Appellate Body Report, *US – Tuna II (Mexico)*, paras. 371-372.

¹⁸³ Panel Report, *US-Poultry (China)*, para. 7.133-140.

¹⁸⁴ *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, Judgment, ICJ Reports 2014, paras. 46, 83.

¹⁸⁵ Gardiner (n 150) 243.

reference to the 1965 agreement and there was additional evidence of state practice showing that the parties considered the two treaties were unrelated.¹⁸⁶

In contrast, the Appellate Body in *US – Tuna II (Mexico)* found that a TBT Committee decision constituted a subsequent agreement on the interpretation of obligations relating to international standards because there were sufficient links:

[W]e note that the title of the Decision expressly refers to "Principles for the Development of International Standards, Guides and Recommendations with Relation to Articles 2, 5 and Annex 3 of the Agreement." We further note that the TBT Committee undertook the activities leading up to the adoption of the Decision "[w]ith a view to developing a better understanding of international standards within the Agreement" and decided to develop the principles contained in the Decision, *inter alia*, "to ensure the effective application of the Agreement" and to "clarify and strengthen the concept of international standards under the Agreement." We therefore consider that the TBT Committee Decision can be considered as a "subsequent agreement" within the meaning of Article 31(3)(a) of the Vienna Convention.¹⁸⁷

Further, the Appellate Body has clarified that the extent to which a subsequent agreement or practice informs the interpretation and application of a term or provision depends "*on the degree to which it 'bears specifically' on the interpretation and application of the respective term or provision.*"¹⁸⁸ It is not enough to show the general relevance of the subsequent agreement, as the extent to which the source affects the interpretation or application of the provision must also be examined. The Appellate Body has generally cautioned that no matter the weight of the agreement, practice or rule, these instruments cannot "*subvert the common intention of the treaty parties as reflected*" in the text.¹⁸⁹

The cautious nature of the Appellate Body regarding subsequent practices and agreements does not necessarily reflect general practice. For example, the WTO agreement has specific procedures for amendments or authoritative interpretations of the covered agreements.¹⁹⁰

¹⁸⁶ *Maritime Delimitation in the Area between Greenland and Jan Mayen*, Judgment, ICJ Reports 1993, para. 28.

¹⁸⁷ Appellate Body Report, *US – Tuna II (Mexico)*, para. 372.

¹⁸⁸ Appellate Body Reports, *US – Tuna II (Mexico)*, para. 372; *US – Clove Cigarettes*, para. 265 (quoting Appellate Body Reports, *EC – Bananas III (Article 21.5 II – Ecuador)*, para. 390).

¹⁸⁹ Appellate Body Report, *Peru – Agricultural Products*, para. 5.94.

¹⁹⁰ Articles IX and X, WTO Agreement: Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, 33 I.L.M. 1144 (1994).

Other international tribunals, at times, have allowed significant value to be added to a treaty from subsequent agreements and practices. The European Court of Justice considered that the subsequent practice followed in the application of a treaty “may override the clear terms of that treaty if that practice reflects the parties’ agreement.”¹⁹¹

As examined, subsequent agreements constitute the most important provision for our analysis as the various post-conclusion agreements and joint instruments within the FTA fall within the present category.

As shown in the *US-Tuna* case, subsequent agreements may have significant impact on the understanding of a term by inserting additional requirement to a term (e.g. may be the basis for preferential treatment of green goods). Many FTAs explicitly recognize that Joint Councils or Committees have the capacity to agree on an interpretation of the provision. However, even if this recognition is not explicit, the FTA committees’ communications, decisions and declarations may constitute a subsequent agreement under Article 31.3(b) of the VCLT.

For instance, Articles 32.1 and 32.4 of the EU-Chile FTA provide that the Trade Council and, under certain circumstances, the Trade Committee have the power to “*adopt decisions to issue binding interpretations of the provisions of this Agreement*” that are binding to the parties and all bodies of the FTA. This language is stronger than the one followed by the EU-Andean Communities FTA, where the Trade Committee has the power to adopt interpretations that are “*into consideration by arbitration panels.*”¹⁹² Hence, the legal value of these decisions is lower than those of the EU-Chile.¹⁹³ Under the former, a possible Panel will be required to primarily look at the text of the decision, while in the latter case, the probative value of the EU-Andean Communities Trade Committee decision is *prima facie* the same as any other interpretive tool.

(b) Article 31.3(b) – Subsequent Practice

¹⁹¹ Case C-464/13 and C-465/13 *Europäische Schule München v Silvana Oberto and Barbara O’Leary*, Judgment (Fourth Chamber) 11 March 2015, para 61 (quoting *Case concerning the Temple of Preah Vihear (Cambodia v Thailand)*, Merits, Judgment of 15 June 1962, ICJ Reports 1962, p. 6; see also *Territorial Dispute (Libyan Arab Jamuhiriyya/Chad)*, Judgment, ICJ Reports 1994, para 60.

¹⁹² Article 13.2(e) of the EU-Andean Communities Agreement.

¹⁹³ Similar for CETA for the Joint Committee (Article 26.2(e)) and Article 8.31)

The parties to a treaty are also able to change their understanding of a treaty provision through a subsequent practice. The purpose is to identify the agreement of all the parties on a particular interpretation or application of the treaty through state practice. Thus, just like a subsequent agreement, such practice must be taken into account in interpreting the treaty since it is an authentic interpretation of the treaty.¹⁹⁴

In general, any action or inaction of the parties implementing the treaty may be considered relevant to finding subsequent practice. According to the ICJ, an agreement is reached when the parties act under the treaty in the belief of a certain meaning of its terms. The rest of the parties are aware of that understanding and accepted it as the treaty stipulates.¹⁹⁵ There are no particular form requirements as long as it can be considered a form of external behavior that reveals or potentially reveals, what the party considers the meaning of a particular treaty term to be.¹⁹⁶ For this reason, national acts of legislation, administration or judicial decisions may be relevant as well as diplomatic correspondence, press releases, transactions, official statements or votes on resolutions in international organizations. Practice is not limited to the behavior of the central government authority, but also to regional or sub-state entities or even public bodies acting in their official capacity. In this regard, an examination may be required of whether acts or pronouncements of non-parties or non-state actors may be attributable to the State parties.¹⁹⁷

It is important to note that the relevant actions or inactions should not be considered in isolation. Rather a sequence of acts or pronouncements is required. The Appellate Body has clarified that this requires:

[A] "concordant, common and consistent" sequence of acts or pronouncements which is sufficient to establish a discernable pattern implying the agreement of the parties regarding its interpretation. An isolated act is generally not sufficient to establish subsequent practice; it is a sequence of acts establishing the agreement of the parties that is relevant.¹⁹⁸

¹⁹⁴ Dörr and Schmalenbach (n 22) 295; International Law Commission (n 169) 66.

¹⁹⁵ *Kasikili/Sedudu Island (Botswana v. Namibia)*, Judgment, ICJ Reports 1999, para. 74.

¹⁹⁶ Dörr (n 156) 597.

¹⁹⁷ Gardiner (n 150) 266.

¹⁹⁸ Appellate Body Report, *Japan – Alcoholic Beverages*, para. 26.

The same criteria was applied in *CCFT v. United States* where the Tribunal found evidence of subsequent practice.¹⁹⁹ Thus, a certain degree of frequency and uniformity of practice is required that illustrates that a settled agreement has been reached between the parties.²⁰⁰ These characteristics of practice are relevant not only to determine whether a practice has been established but also to determine the weight to accord the practice in the interpretative process. A more consistent or uniform practice may have a bigger impact when interpreting a term, than more sporadic or less consistent practice.

Further, this sequence of acts is required to occur “in the application” of the treaty. This means that a subjective link should exist between the practice and the treaty.²⁰¹ Hence, a voluntary practice not meant to be part of the application of the treaty is not relevant for Article 31.3(b), even if it may be considered part of the Article 32 analysis of supplementary practice under the “circumstances of the conclusion” of the treaty.²⁰²

However, practice that relates to the non-application of a treaty to certain issues could be relevant practice for the interpretation or application of a treaty.²⁰³ However, such a negative inference must nonetheless meet the “concordant, common and discernible pattern” criteria.²⁰⁴ Such non-application might aid in drawing conclusions over the parties’ consideration of the applicability of the treaty.²⁰⁵

Moreover, the subsequent state practice in question does not have to have been engaged by all the contracting parties.²⁰⁶ Practice by some contracting parties may be enough to satisfy the requirements of Article 31.3(b) if the inactive parties have accepted this practice. For example, this may arise when the treaty establishes a series of reciprocal obligations or when certain obligations do not affect all parties.

¹⁹⁹ *C.C.F.T. v. United States*, UNCITRAL Arbitration under NAFTA Chapter Eleven, Award on Jurisdiction, 28 January 2008, paras. 188-189.

²⁰⁰ International Law Commission (n 169) 72.

²⁰¹ International Law Commission (n 31) 66 (Draft Conclusion 6, para. 1, first sentence).

²⁰² International Law Commission (n 31), 45.

²⁰³ Dörr (n 156) 598.

²⁰⁴ Appellate Body Report, *Japan – Alcoholic Beverages II*, pp. 12-13; Panel Report, *US – FSC*, para. 7.75; Yearbook of the International Law Commission, Vol. II, p. 222; Ian Sinclair, *The Vienna Convention on the Law of Treaties* (2nd ed.), Manchester (1984), p. 138).

²⁰⁵ Gardiner (n 150) 262–64.

²⁰⁶ International Law Commission (n 31) 73-74.

In the WTO, this was the case in *EC – Chicken Cuts* where the Appellate Body found as follows:

[P]ractice by some, but not all parties is obviously not of the same order as practice by only one or very few parties. To our mind, it would be difficult to establish a concordant, common and discernible pattern on the basis of acts or pronouncements of one or very few parties to a multilateral treaty, such as the WTO Agreement. We acknowledge, however, that, if only some WTO Members have actually traded or classified products under a given heading, this circumstance may reduce the availability of such acts and pronouncements for purposes of determining the existence of subsequent practice within the meaning of Article 31(3)(b).²⁰⁷

In other words, if the trade of the related product were limited to particular parties, then the acts and pronouncements required would be less. Still, the inactivity of the other parties would be required.

In this regard, the ICJ has generally recognized the possibility of expressing agreement regarding interpretation by silence or inaction. In *Temple of Preah Vihear*, the Court considered that where it is clear that the circumstances were such so as to call for some reaction within a reasonable period, the State confronted with a particular subsequent conduct by another contracting party “must be held to have acquiesced.”²⁰⁸ This consideration has received general acceptance by international tribunals.²⁰⁹ For example, in *EC – Chicken Cuts*, the Appellate Body noted that:

[I]n specific situations, the “lack of reaction” or silence by a particular treaty party may, in the light of attendant circumstances, be understood as acceptance of the practice of other treaty parties. Such situations may occur when a party that has not engaged in a practice has become or has been made aware of the practice of other parties (for example, by means of notification or by virtue of participation in a forum where it is discussed), but does not react to it.²¹⁰

²⁰⁷ Appellate Body Report, *EC – Chicken Cuts*, para. 259.

²⁰⁸ Case concerning the Temple of Preah Vihear (Cambodia v Thailand), Merits, Judgment of 15 June 1962, I.C.J. Reports 1962, p. 6, p. 23.

²⁰⁹ See, e.g., *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, ICJ Reports 1996, para. 30; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Jurisdiction and Admissibility, Judgment, ICJ Reports 1984, para. 39; *Prosecutor v. Anto Furundžija*, ICTY, Judgment, Appeals Chamber, 21 July 2000, IT-95-17/1, para. 179; and *Rantsev v. Cyprus and Russia*, App. no. 25965/04, ECHR Judgment, 7 January 2010, para. 285.

²¹⁰ Appellate Body Report, *EC – Chicken Cuts*, para. 272.

Lastly, in relation to human rights treaties, subsequent practice has been established based on the work of relevant committees that oversee the application of the treaty, such as interpretative comments and the examination of complaints of non-compliance. The Human Rights Committee considered that the General Comments of the Committee may be considered:

[S]ubsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation” within the sense of article 31(3)(b) of the Vienna Convention on the Law of Treaties or, alternatively, the acquiescence of States parties in those determinations constitutes such practice.²¹¹

The latter is especially relevant in our case. Unilateral instruments introduced by either party (such as a declaration) may become relevant practice under Article 31.3(b) VCLT, should the other party systematically acquiesce to the repercussions of those instruments. A FTA committee may play an important role in this process, either because one of the parties fails to object to a unilateral action or declaration of the other party or because the parties may explicitly acknowledge a unilateral practice or instrument. An interesting aspect of this is the contact points of Canada and the EU under CETA. According to Article 10.5, these contact points are responsible for *“the development and adoption of common criteria as well as interpretations.”* This ‘data gathering’ competence of the contact points may well serve in developing and codifying subsequent practices by the parties, which can be used as evidence in possible proceedings.

2. Article 32 VCLT – Supplementary Means of Interpretation

Article 32 of the VCLT is entitled “supplementary means of interpretation” and, thus, is a supplement to the general rule in Article 31. It introduces a list of means that could aid an interpreter in situations where the meaning of a term remains ambiguous or manifestly absurd following the use of the tools under Article 31. The supplementary means could also assist in reaffirming interpretative results reached under Article 31.²¹² There is no requirement to have recourse to Article 32; this is supported by the use of the permissive language of “recourse

²¹¹ UN Human Rights Committee, General comment no. 33, Obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights, 25 June 2009, CCPR/C/GC/33.

²¹² Oliver Dörr, ‘Article 32. Supplementary Means of Interpretation’ in Oliver Dörr and Kirsten Schmalenbach (eds), *Vienna Convention on the Law of Treaties: A Commentary* (Springer 2012) 617.

may be had to” However, Article 32 recommends that these sources be utilized when the meaning of a term is “ambiguous,” “obscure,” or leads to a result that is “manifestly absurd or unreasonable.”²¹³

Article 32 states that “*the preparatory work of the treaty and the circumstances of its conclusion*” may be used as supplementary means of interpretation. These are not the only resources an interpreter can have recourse to under Article 32, since the list is illustrative and open-ended.²¹⁴ Indeed, the text of Article 32 provides that the recourse to supplementary means “include[e]” the preparatory work and the circumstances surrounding the conclusion of a treaty.

The primary and most commonly used supplementary means for interpretation is the preparatory works of a treaty (or *travaux préparatoires* in French.) The pertinence of this source for interpretations was recognized already in 1927 by the predecessor to the ICJ (the Permanent International Court of Justice (“PICJ”)) in the *Lotus* case.²¹⁵ The Court used the preparatory work of the Convention of Lausanne to interpret its Article 15, which delimited the jurisdiction of the parties.²¹⁶

International adjudicators often welcome preparatory works to aid their interpretations as these sources may reveal the common intentions of the drafters on the meaning of specific treaty terms.²¹⁷ These sources include documents related to a treaty that were generated during its negotiation, such as draft texts, commentaries, minutes of meetings, negotiation records, diplomatic exchanges, statements and memoranda.²¹⁸

An important factor when examining preparatory work is its relation to the treaty under consideration. For treaty interpretation, only preparatory work that illuminates the substance of the treaty is relevant. For example, documents that show the growing common intention or

²¹³ There is a debate on whether the provisions are a closed list or not (Julian Mortenson, ‘The Travaux of Travaux: Is the Vienna Convention Hostile to Drafting History?’ [2013] Articles; Esmé Shirlow and Michael Waibel, ‘A Sliding Scale Approach to *Travaux* in Treaty Interpretation: The Case of Investment Treaties’ [2021] British Yearbook of International Law.

²¹⁴ Gardiner (n 150) 358..

²¹⁵ *S.S. Lotus (France v. Turkey)*, 1927 P.C.I.J. Ser. A No. 10, p. 16; and *Similar approach in Payment of Various Serbian Loans Issued in France (France v. Yugoslavia)*, 1929 P.C.I.J. Ser. A No. 20, p. 30.

²¹⁶ *S.S. Lotus (France v. Turkey)*, 1927 P.C.I.J. Ser. A No. 10, p. 16; and *Similar approach in Payment of Various Serbian Loans Issued in France (France v. Yugoslavia)*, 1929 P.C.I.J. Ser. A No. 20, para. 38.

²¹⁷ Gardiner (n 18) 358; see also *Iron Rhine (‘Ijzeren Rhin’) Railway Arbitration (Belgium v Netherlands)*, (2005) 27 IAA 35, para. 48.

²¹⁸ Dörr (n 206) 621.

agreement of the parties over the meaning of a particular term or a document adopted close in time to the conclusion of the treaty, would be considered highly valuable. By contrast, unilateral documents of one of the disputing parties, such as statements from State representatives, national legislation or national court decisions, are only examined if introduced to the other parties during the negotiation. Thus, there must be some shared knowledge about the contents of such documents.²¹⁹

For example, the ICJ in *Oil Platforms* considered that unilateral documents of the United States administration (i.e. a memorandum sent by the State Department to the US embassy in China and a message of the Secretary of State transmitting several treaties to the US Senate for consent to ratification) were acceptable since they were part of the negotiating process.²²⁰ Similarly, the ICJ examined a note sent by the UN Mission of Norway to the UN Secretariat when examining the MoU between Somalia and Kenya, since Norway provided administrative assistance to Somalia.²²¹

In this regard, preparatory works on multilateral treaties are relevant even if a particular party did not participate in the stage of negotiation at issue. This applies especially to parties that acceded to the treaty after its conclusion or entry into force. Such parties may request to see the *travaux préparatoires* before it accedes. Thus, even if some documents relating to the negotiation were unpublished, but accessible, then they could be taken into account as a supplementary means of interpretation.²²²

However, the Appellate Body in *US – Stainless Steel (Mexico)* dismissed the relevance of historical materials of the Anti-Dumping Agreement concerning zeroing, such as “the 1960 Group of Experts Report ... that dealt with the issue of zeroing in the context of the Tokyo Round Anti-Dumping Code and several proposals submitted during the Uruguay Round.”²²³ The rationale for rejecting these documents were that they reflected the position of only some of the negotiating parties.²²⁴ In another dispute, the Appellate Body accepted a cover note

²¹⁹ Dörr (n 64) 621.

²²⁰ *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Preliminary Objection, Judgment, ICJ Reports 1996, para. 29.

²²¹ *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Preliminary Objections, Judgment, ICJ Reports 2017, para. 104.

²²² ILC Draft Articles on the Law of Treaties with Commentaries, Article 27, p. 223, para. 20; and Dörr (n 64) 622.

²²³ Appellate Body Report, *US – Stainless Steel (Mexico)*, para. 129.

²²⁴ Appellate Body Report, *US – Stainless Steel (Mexico)*, para. 130.

drafted with the help of the GATT Secretariat, which was attached to certain draft schedules, as relevant preparatory work because it reflected comments made by negotiating parties.²²⁵

The second supplementary means of interpretation in Article 32 is “the circumstances of [the treaty’s] conclusion.” This refers to both contemporary circumstances and the general historical context during the treaty's conclusion.²²⁶

At the WTO, the Appellate Body has clarified that any act, event or instrument may qualify as “a circumstance,” notwithstanding whether this is a multilateral or unilateral act, instrument or statement. The goal is to examine any relevant source that “may be useful in ascertaining ‘the reality of the situation which the parties wished to regulate by means of the treaty’ and, ultimately, for discerning the common intentions of the parties.”²²⁷

For an event to be relevant, the Appellate Body has found that there must be some temporal proximity between the event and the treaty’s conclusion. Thus, even historical events can be relevant if they continue to influence or reflect the parties’ common intention:

Events, acts and instruments may form part of the “historical background against which the treaty was negotiated”, even when these circumstances predate the point in time when the treaty is concluded, but continue to influence or reflect the common intentions of the parties at the time of conclusion.²²⁸

However, the further back in time that an event, act or other instrument took place, the less relevant it will be for interpreting.²²⁹ In this regard, the Appellate Body has accepted specific tariff-classification practice of Members during the final negotiation round as circumstances of the treaty’s conclusion.²³⁰ Similarly, domestic legislation and prevailing national jurisprudence at the time of the treaty’s conclusion could be considered relevant if this was known to the negotiating parties.²³¹

It is evident that the various drafts, side-instruments, unilateral or joint declarations that did not occur at the time of the conclusion of the treaty fall within the aforementioned

²²⁵ Appellate Body Report, *US – Gambling*, paras. 172, 197.

²²⁶ Sir H Waldock, “3rd Report on the Law of Treaties”, YbILC 5-65 (1964), p. 59, para. 22.

²²⁷ Appellate Body Report, *EC – Chicken Cuts*, para. 289.

²²⁸ Appellate Body Report, *EC – Chicken Cuts*, para. 293.

²²⁹ *Ibid.*

²³⁰ Appellate Body Report, *EC – Computer Equipment*, para. 92.

²³¹ Appellate Body Report, *EC – Chicken Cuts*, paras. 282-309.

categories. These instruments are usually important and have persuasive value, yet their *stricto sensu* legal relevance is diminished by their inclusion in Article 32 of the VCLT.

Aside from preparatory works and the circumstances of conclusion, Article 32 introduces an open list of supplementary means.²³² So far, the practice of international courts and tribunals have no well-established list of sources that can be used. Academia suggests that any principle or canons of interpretation not included in the VCLT may be used pursuant to Article 32.²³³ For example, subsequent practice that does not satisfy the requirements under Article 31.3(b), may be considered relevant at this point. The Appellate Body in *EC – Chicken Cuts* considered that:

[I]t is possible that documents published, events occurring or practice followed subsequent to the conclusion of the treaty may give an indication of what were and what were not, the ‘common intentions of the parties’ at the time of the conclusion. The relevance of such documents, events or practice would have to be determined on a case by- case basis.²³⁴

Similarly, documents that are not considered part of the preparatory works, such as documents not directly related with the negotiations, were considered by the panel in *Chile – Price Band System*.²³⁵ The documents in the referred case predated the Agreement on Agriculture, the treaty being interpreted at the time. Nonetheless, the Panel noted their usefulness in interpreting the Agriculture Agreement: “(...) *we believe that they are also helpful in interpreting those terms as they appear in Article 4.2 of the Agreement on Agriculture.*”²³⁶

In sum, unilateral declarations, practice by the parties, as well as other instruments that do not meet the requirements of Article 31, may be used as supplementary means of interpretation under Article 32.

D. Interim Conclusion

In conclusion, the various instruments that the parties, either bilaterally or unilaterally, introduce after the treaty's conclusion may significantly impact the treaty's application and

²³² *HICEE B.V. v. Slovak Republic*, PCA Case No. 2009-11, Partial Award on Jurisdiction, 23 May 2011, para. 117.

²³³ Gardiner (n18) 357-358.

²³⁴ Appellate Body Report, *EC – Chicken Cuts*, para. 305.

²³⁵ Panel Report, *Chile – Price Band System*, paras. 7.35-7.37.

²³⁶ Panel Report, *Chile – Price Band System*, paras. 7.37.

interpretation. Even though they do not amount to a formal amendment, these instruments may substantially change the operation of a term, allowing for clarifications that previously could not be derived by the agreement's text.

A great example of an instrument after the conclusion of a treaty was present in the context of the “Windsor Framework,” which demonstrated that far-reaching and more fundamental changes are possible in trade agreements when the parties agree, share values and seek to collaborate.²³⁷ The Windsor Framework found solutions to a myriad of challenges arguably “within the framework of the Withdrawal Agreement.”²³⁸ The frame for several draft changes was agreed in the Windsor Political Declaration by the European Commission and the Government of the United Kingdom. In other words, a joint statement should not be underestimated as it provides the political framework for subsequent negotiations.

The importance of such decisions was highlighted recently with a decision from a judge part of the Northern Ireland High Court concerning the Illegal Migration Act (IMA) of 2023.²³⁹ The Act requires that those who arrive in the UK’s territory illegally, may not stay there and will be transferred to either their country of origin or a safe third country.²⁴⁰ The judge held that a considerable portion of the IMA would not apply to Northern Ireland, given that it would breach Article 2(1) of the Windsor Framework. In particular, the Framework requires that the UK not lower or eliminate the human rights provisions originated from the Belfast (Good Friday) Agreement of 1998. The Judge held that the IMA would reduce the human rights which asylum seekers in Northern Ireland would have. This recent decision shows the relevance of instruments done after the conclusion of a treaty. Despite being a subsequent instrument, it is still tied to the normative framework of the original treaty. Thus, these subsequent instruments shape the understanding and the normative scope of the original treaties.

²³⁷ EU Commission, Windsor Framework: a new way forward for the Protocol on Ireland/Northern Ireland, Feb 2023, available online:

https://ec.europa.eu/commission/presscorner/detail/en/qanda_23_1271

²³⁸ See EU Commission, The Windsor Framework in Detail, Available online: https://commission.europa.eu/strategy-and-policy/relations-non-eu-countries/relations-united-kingdom/eu-uk-withdrawal-agreement-new/windsor-framework-new_en

²³⁹ High Court Of Justice In Northern Ireland, [2024] NIKB 35, Available online at: <https://www.judiciaryni.uk/files/judiciaryni/2024-05/NIHRC%27s%20Application%20and%20JR295%27s%20Application%20and%20In%20the%20the%20matter%20of%20The%20Illegal%20Migration%20Act%202023.pdf>

²⁴⁰ Illegal Migration Act, 2023, Available at: <https://www.gov.uk/government/collections/illegal-migration-bill>

Consequently, the ideal option is to issue Joint Declarations by the official FTA institutions or the FTA parties themselves, as a form of subsequent agreement under Article 31.3(a) of the VCLT. The probative value of these instruments has been generally and consistently (maybe aside from ISDS) high and dispositive. Such instruments could be generated through the internal bodies of the FTAs, i.e. the committees and sub-committees, that oversee the application and implementation of the agreement.

4. Analysis of Decisions and Instruments

A. Drawbacks or lack of action

Post-conclusion treaty instruments on environmental protection have not been widely followed in EU FTAs. The fact that most of those treaties have only been recently ratified or have yet to be ratified,²⁴¹ can be recognized as one of the reasons for general lack of action. Still, the EU and Canada have concluded interpretive decisions for the investment chapter of the CETA, even though it is not in force.²⁴² This shows that other reasons might be behind the lack of use of post-treaty instruments.

Further, many of the treaties do not include climate change or other related objectives as part of their subject-matter. Indeed, older FTAs did not have a similar comprehensive scope as newer treaties, which among else consider climate change as an essential element of the treaty.²⁴³ A pertinent example is the EU-Mercosur Agreement which lags behind the current EU FTA practice.²⁴⁴

In the case of the EU-Chile and the EU-Andean Communities Agreements, committees' discussions have helped built joint declarations to advance sustainable development and environmental related objectives. Discussions and declarations within committees and sub-committees signal the Parties' path and interests for future negotiations. Through the work in

²⁴¹ Such as EU-Central America.

²⁴² E.g., Joint Interpretative Instrument on the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union and its Member States, 14.01.2017; CETA Joint Committee Interpretation regarding Article 8.10, Annex 8-A, Article 8.9 and Article 8.39 of the Comprehensive Economic and Trade Agreement (CETA)

²⁴³ E.g., 'Free Trade Agreement between the European Union and New Zealand' (30.06.2022).

²⁴⁴ CISDL, Environment and Climate Change in the Draft EU-Mercosur Trade Agreement: Legal Analysis and Proposed Provisions, (2021), Pg. 38 and Andrade Correa, F. and Leehmen, A., 'Trade, Sustainable Development and Climate Change: How Can Free Trade Agreements Be Leveraged for Increased Climate Action? Perspectives on the EU-MERCOSUR Agreement' Pg. 289.

committees, Parties share their experiences and promote bilateral work agendas and consensual regional or multilateral positions on the topics.

B. Recent Examples

In the XVII meeting of the EU-Chile Association Committee held online on 23 September 2021, both parties explored the potential for future collaboration in green hydrogen in Chile, emphasizing its role in creating green jobs and promoting economic diversification.²⁴⁵ They lauded Chile's successful presidency of COP25, acknowledging the EU's valuable support via the Euroclima+ program.²⁴⁶ Both committed to advocating for robust policies for COP26 and agreed on enhancing ocean governance, focusing on marine conservation and curbing illegal fishing.²⁴⁷

Even though the EU-Chile Association Committee and the EU-Chile Joint Consultative Committee have discussed topics related to climate change and sustainable development, there is no publicly available information on similar discussions within the Trade Committee of the agreement. Nevertheless, in a joint statement on 2 December 2022, the European Union and Chile expressed their commitment to ensuring that their agreements prioritize sustainability, intertwining economic growth with environmental protection and the fight against climate change. They pledged to uphold the UN Climate Change Convention and the Paris Agreement. Upon the interim FTA taking effect, a formal review will be launched to contemplate the addition of relevant provisions, possibly strengthening the enforcement of the Trade and Sustainable Development chapter.

The progressive discussion of environmental topics within the EU-Chile Association Committee and Subcommittees has allowed both parties to advance in cooperation activities to address these issues. For instance, in 2023, the First High Level Dialogue on Climate and Environment between the EU and Chile took place in Santiago, Chile. Throughout the conversation, the parties explored shared objectives, including a fair transition in climate policy, combating biodiversity depletion, preserving forests, preventing deforestation and collaborating on sustainable waste and resource management-particularly in the plastics and

²⁴⁵ Joint Communiqué: XVII EU-Chile Association Committee, 6, available online at: https://www.eeas.europa.eu/eeas/joint-communication%C3%A9-xvii-eu-chile-association-committee_en

²⁴⁶ Joint Communiqué: XVII EU-Chile Association Committee, 9.

²⁴⁷ Ibid.

water sectors. Consistent with their global pledges, they concurred on furthering the development of green, sustainable and nature-conscious economies.

The EU presented its ambitious European Green Deal at the VI Meeting of the Trade Committee of the EU-Andean Communities Agreement in Bogotá, Colombia in 2019. The EU aims to become the world's first climate-neutral continent by 2050, targeting a 50-55% emission reduction by 2030, with strategies like the European climate law, the expansion of the ETS system and a potential carbon border tax. Colombia highlighted its National Development Plan, which integrates deforestation and biodiversity as national security aspects and underlined the Paris Agreement's significance. Ecuador emphasized recognizing nature as having rights, detailed their 2017-2022 deforestation reduction goals and introduced the 2018 Organic Environmental Code, which covers broad environmental aspects, including mitigation and adaptation measures for climate change. Peru spotlighted its comprehensive climate change management strategies, emphasizing participatory processes in constructing its framework law on climate change.

During the 9th Meeting of the Subcommittee on Trade and Sustainable Development of the EU-Andean Communities Agreement in October 2022, the European Union asserted that the ongoing energy crisis would not deter its climate commitments but bolster sustainable strategies. The EU emphasized its climate diplomacy efforts to guide third countries towards a zero-carbon economy. It highlighted a proposal for the Corporate Sustainability Due Diligence Directive, which considers companies' environmental, human rights and climate impacts. Colombia showcased its amplified climate objectives, progressing from a 20% GHG reduction by 2030 to a 51% target, referencing new initiatives such as the Strategy 2050 and the Climate Action Law. Ecuador spotlighted its "Cero Carbón" Programme and Compact for Transition to Decarbonisation. It mentioned the ongoing development of its National Climate Change Adaptation Plan, focusing on enhancing resilience in key sectors.

In the case of the EU-Andean Communities agreement, discussions held at the Committees and Subcommittees have also been reinforced by actions taken by the Parties, particularly the EU. For instance, in 2019, the EU alerted Ecuador about the necessity to

intensify oversight over the growth of activities such as unauthorized fishing.²⁴⁸ As a countermeasure, Ecuador established the Yellow Card Crisis Committee to bolster the monitoring and control of exported goods, alongside initiating the Integrated Fisheries System to implement automated traceability of fisheries products. Furthermore, the adoption of the new Fisheries Law came into effect, introducing punitive measures designed to deter illicit fishing practices (as reported by the National Assembly of the Republic of Ecuador in 2020.) Additionally, the Technical Unit for Aquaculture and Fisheries Regulation and Control was formed to oversee fisheries-related activities and a National Aquaculture and Fisheries Research Fund was set up. A strategic Action Plan was developed to tackle the issued warnings and collaboration groups were formed involving both public and private sector stakeholders. While there were no trade sanctions at this point, this was a step that the EU could have followed in case of inaction by Ecuador.

Moreover, following the discussion on the EU Green Deal, held during the VII Trade and Sustainable Development Subcommittee Meeting in 2020, Colombia had indicated its eagerness to consider a joint venture with the EU on a fair-trade initiative, which aligns with the European Green Deal's objectives. The government of Ecuador has suggested that the Andean nations, as trade associates of the EU, align with the Green Deal's standards and has proposed the creation of tools and cooperation programs to bolster their capabilities in this sector. Additionally, the government seeks to examine new options for optimizing the benefits of the Trade Agreement.²⁴⁹

The committees' minutes show that there is an interest among the Parties to share experiences and use trade as an instrument to achieve their climate-related objectives. The evolving nature of committees' discussions can be accentuated, signaling their adaptability to contemporary environmental challenges.

Besides, derived from the experience of the EU-Chile agreement's modernization process, it is possible to establish that there is room to improve the existing provisions related to trade and climate change by including new commitments, recognizing international

²⁴⁸ Farlie, A. (2022). New challenges for the European Union's Multiparty Trade Agreement with Peru, Colombia and Ecuador. Documentos de Trabajo Occasional paper FC/EU-LAC (2) EN. EULAC Foundation.

²⁴⁹ Farlie, A. (2022). New challenges for the European Union's Multiparty Trade Agreement with Peru, Colombia and Ecuador. Documentos de Trabajo Occasional paper FC/EU-LAC (2) EN. EULAC Foundation.

agreements and expanding areas of cooperation. It is worth mentioning that environmental issues later incorporated in the modernized EU-Chile agreement were already discussed within the EU-Chile Committees. Therefore, a stronger ambition to include environmental commitments did not start with the modernization of the agreement.

5. Recommendations

It is possible to identify the specific areas to be discussed at the Committees and Subcommittees for future joint declarations. These declarations should investigate ways that the treaty may influence the Parties' adoption of further commitments under their NDCs, which is something that current legal texts do not necessarily do.²⁵⁰ With the previous analysis in hand and based on the literature on climate-related provisions in FTAs,²⁵¹ it is possible to identify areas for bilateral discussions to generate new provisions to be included in trade agreements. These provisions directly link with respective NDCs areas.

The first element to be highlighted, which has been part of committees and subcommittee discussions, is the recognition of climate change, the climate emergency and the interplay of multilateral environmental agreements with trade agreements. Due to the climate emergency, ongoing negotiations by the EU with New Zealand and Thailand have elevated the urgency of taking action against climate change, for example, by referring to the

²⁵⁰ Delev, C. (2022). Ratcheting up Environmental Protection Standards: What are the Opportunities for Improving the EU-Andes Trade Agreement? in INTERNATIONAL TRADE, CLIMATE CHANGE and ENVIRONMENTAL INTERFACES: UK LEGAL BRIEF SERIES. <<https://www.cisd.org/wp-content/uploads/2022/05/EU-Andes-Agreement-Legal-Brief-May-update.pdf>>; Cáceres, J. (2022). Brief on the Chile Inclusion of Environment Commitments in Trade Agreements and The Current EU-Chile Trade Agreement Negotiations, in INTERNATIONAL TRADE, CLIMATE CHANGE and ENVIRONMENTAL INTERFACES: UK LEGAL BRIEF SERIES. <https://www.cisd.org/wp-content/uploads/2022/05/Brief-on-the-Chile-Inclusion-of-Environment-Commitments-in-Trade-Agreements-and-The-Current-EU-Chile-Trade-Agreement-Negotiations_Javiera-Caceres-Bustamante_revised.pdf>

²⁵¹ Cáceres, J. (2022). Brief on the Chile Inclusion of Environment Commitments in Trade Agreements and The Current EU-Chile Trade Agreement Negotiations, in INTERNATIONAL TRADE, CLIMATE CHANGE and ENVIRONMENTAL INTERFACES: UK LEGAL BRIEF SERIES. <https://www.cisd.org/wp-content/uploads/2022/05/Brief-on-the-Chile-Inclusion-of-Environment-Commitments-in-Trade-Agreements-and-The-Current-EU-Chile-Trade-Agreement-Negotiations_Javiera-Caceres-Bustamante_revised.pdf>; Cáceres, J. *et al.* (2021). Environment and Climate Change in the Draft EU-Mercosur Trade Agreement, in INTERNATIONAL TRADE, CLIMATE CHANGE and ENVIRONMENTAL INTERFACES: UK LEGAL BRIEF SERIES. <<https://www.cisd.org/wp-content/uploads/2021/07/Environment-and-Climate-Change-in-the-Draft-EU-29.04.2021-Final.pdf>>; Delev, C. (2022). Ratcheting up Environmental Protection Standards: What are the Opportunities for Improving the EU-Andes Trade Agreement? in INTERNATIONAL TRADE, CLIMATE CHANGE and ENVIRONMENTAL INTERFACES: UK LEGAL BRIEF SERIES. <<https://www.cisd.org/wp-content/uploads/2022/05/EU-Andes-Agreement-Legal-Brief-May-update.pdf>>; Lehman, A. & De Andrade, F. (2022). Legal analysis of MERCOSUR NDCs Climate Commitments Identification of Possible New Climate Provisions for the EU-MERCOSUR FTA. INTERNATIONAL TRADE, CLIMATE CHANGE and ENVIRONMENTAL INTERFACES: UK LEGAL BRIEF SERIES. <<https://www.cisd.org/wp-content/uploads/2023/04/Legal-analysis-of-MERCOSUR-NDCs-climate-commitments-paper-03.04.2023.pdf>>; Tokas, M. (2022). Highest Priority Trade Challenges Related to Climate Change: EU and Americas Economic Law Relations. INTERNATIONAL TRADE, CLIMATE CHANGE and ENVIRONMENTAL INTERFACES: UK LEGAL BRIEF SERIES. <<https://www.cisd.org/wp-content/uploads/2022/07/Highest-priority-trade-challenges-related-to-climate-in-EU-Americas-002.pdf>>

Special Report on Global Warming of 1.5 °C of the Intergovernmental Panel on Climate Change. While agreements with Chile (Article 26.10 on Trade and Climate Change)²⁵² and Colombia-Ecuador-Peru (Article 275 on Climate Change)²⁵³ include provisions recognizing climate change, these commitments could be updated. For this to be achieved, formal and informal discussions are needed, which should take place at the different agreement's administration committees. For example, the EU-Andean Community administration committee could discuss how the relationship between trade and NDCs could be made more explicit, as its current text does not refer to them. Another way to advance the environmental ambition of trade agreements could be to include in future amendments provisions recognizing climate change in the Preamble or general objectives of the agreement and not only within the trade and sustainable development chapters. This alternative would establish the environmental perspective as a cross-cutting issue within the agreements, aiding in future interpretations of their commitments.

A second working program could be established to review which commitments the agreements could incorporate to raise their environmental awareness. Particularly, the subcommittees could initiate an identification process of sensitive sectors in which a market approach to environmental objectives could be explored. This process may expand the number and scope of specific provisions within trade and sustainable development chapters.

Recognizing that both EU agreements with Chile and the Andean Community include provisions in areas of interest, these areas could expand to those identified by partner economies within their NDCs to promote the achievement of said environmental objectives. Cross-cutting areas of interest within Latin American countries NDCs include water management, agriculture, forestry and energy. Some of these areas have already been covered in the work of the committees. For example, in the XVII meeting of the EU-Chile Association Committee in 2021, Parties reaffirmed to work together to develop common approaches for better ocean governance and reduce illegal, unreported and unregulated fishing. In the V Meeting of the Trade Committee of the EU-Colombia-Ecuador-Peru Agreement, held in 2018,

²⁵² Article 26.10 'European Union-Chile Advanced Framework Agreement (Interim Agreement)' (n 127).

²⁵³ Article 275 EU-Andean Community FTA.

the Trade and Sustainable Development Subcommittee reviews the work done concerning deforestation, including the vision of the EU and Ecuador.

Subsequent meetings in the framework of the EU-Andean Community agreement have addressed deforestation, biodiversity, carbon border tax and energy, amongst others. Looking into specific areas of interest; for Chile, fishing, urban planning and coastal zones may be identified; for Colombia, settlements and infrastructure and health; for Ecuador, risk management and industrial processes; and for Peru, transportation and tourism. Some of these areas are already included in the agreements, as Trade and Forests are covered by Article 26.11 of the EU-Chile agreement²⁵⁴ and Article 273 of the EU-Colombia-Ecuador-Peru agreement,²⁵⁵ and as fisheries are covered by Article 26.14 and Article 274 respectively.

Nevertheless, the agreement between the EU-Andean Community does not incorporate specific provisions on sustainable agriculture, energy or mining. Hence, from the experience of Chile, this agreement could be further amended to reflect the challenges and interests of the Parties in these areas.

A second way to advance in this path would be to follow the practice established in the EU-New Zealand agreement of specific trade liberalization of environmentally friendly goods and services. This option would elevate trade in environmentally sensitive products, from recognition and cooperation schemes to actual preferential market access, promoting both economic growth and sustainable development. Finally, the agreements could disincentivize the trade of polluting or non-sustainable products in the identified areas to promote greener trade.

One example of this approach is provisions related to energy and raw materials included in the agreements of the EU with New Zealand and Chile, which include, amongst others, commitments on environmental impact assessments for activities related to the production of energy goods or raw materials.

A third action line identified is the opportunity to increase cooperation in areas of interest such as the circular economy or biodiversity. This may be achieved by Parties recognizing the

²⁵⁴ Article 26.11 'European Union-Chile Advanced Framework Agreement (Interim Agreement)' (n 127).

²⁵⁵ Article 273 EU-Andean Community FTA.

relevance of conservation and sustainable use of resources, including biological diversity and of relevant international agreements. The modernized agreement between the EU and Chile has advanced by including provisions to reflect the relevance of these working areas (Article 26.7 on Cooperation Activities and Article 26.13 on Trade and Biological Diversity,) which mainly recognize the relevance of cooperation schemes and future collaboration.

Moreover, these commitments could be used to promote the use and implementation of measures that reduce illegal trade affecting biodiversity and encourage trade in natural resource-based products. Also, in terms of cooperation, agreements could investigate increased technology transfer for achieving sustainable development objectives by establishing commitments on increased cooperation, technology transfer and technical assistance or by integrating greenhouse gas emissions-related externalities associated with consumption and production. An exciting example within the EU-Chile agreement is Article 8.15²⁵⁶ on Energy transition and renewable fuels, which reinforces the need for cooperation on regulations and standards and to promote the use of renewable fuels considering their contribution to reducing greenhouse gas emissions. The spirit of this article could be included in the agreement between the EU-Andean Community, especially considering that carbon-based fuel is a significant commodity in the Andean region.

Furthermore, committees of both agreements may explore the latest provisions related to cooperation on the effective implementation of TSD provisions. As it is well known, to achieve the objectives of TSD chapters, the commitment of technical and financial funds is required, which are not necessarily available to the Parties. To this respect, the Joint Statement on Trade and Sustainable Development of the EU-Kenya (2023) agreement presents an opportunity to promote better cooperation between members, as it states:

"Commit, in the context of the Rendez-Vous clause, to further explore strengthening mutual mechanisms for the effective implementation and application of TSD commitments, within the initial review period. Such exploration in the furtherance of mutual compliance may include *implementation roadmaps, financial and technical assistance*, encouragement of participatory approaches as well as

²⁵⁶ Article 8.15 'European Union-Chile Advanced Framework Agreement (Interim Agreement)' (n 127).

ways to address potential divergences in the implementation of agreed commitments.”²⁵⁷

Hence, this Joint Statement may become a model for future statements between the EU and its Latin American partners to provide new elements to ensure the effective implementation and application of TSD commitments.

In addition, joint interpretative statements can serve as a useful tool to further engage trading partners in the fulfilment of SDGs. In February 2024, the 4th Joint Committee in the EU-Canada CETA adopted a joint interpretative statement on investment. In it, under the climate change section, the Parties agreed that “When interpreting the provisions of Chapter Eight (Investment) of the Agreement, the Tribunal shall give due consideration to the commitments of the Parties under multilateral environmental agreements”.²⁵⁸ Further, the obligations and rights present in the investment chapter of the Agreement “should be interpreted in a manner that supports the ability of the Parties to give effect to their respective commitments to reduce greenhouse gas emissions by adopting or maintaining measures designed and applied to mitigate or combat climate change or address its present or future consequences”.²⁵⁹

The example of the CETA Joint Interpretative Instrument demonstrates how sustainability can be injected into trade relations even via dispute settlement. By agreeing that due consideration should be given to the commitments of the Parties, including the Paris Agreement, the Parties are upgrading sustainability into their trade relations – even under dispute settlement. The parties can agree in an interpretive declaration that specifies the instruments and policies recognized by the parties as measures designed or applied to mitigate or combat climate change and set down specific goals and deadlines. Similar results can be achieved by the relevant FTA committee by issuing a decision on the implementation of a relevant chapter, whereby the parties operationalize soft commitments on regulatory cooperation and promotion of green investments. The parties could agree on specific targets

²⁵⁷ EU-Kenya. Joint Statement on Trade and Sustainable Development by the European Union and Kenya. [2023]. <<https://circabc.europa.eu/rest/download/3e35d311-e7a0-42bd-a066-2661148ab0b4>>

²⁵⁸ Joint Interpretative Instrument on the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union and its Member States, Available online at: <https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/6d1b2d5b-6c9e-45d5-9027-07642a8e511a/details?download=true>

²⁵⁹ Ibid.

to increase foreign direct investment from investors of the one party to the other on key sectors and industries on energy and climate transition.²⁶⁰

²⁶⁰ See Article 7.1, EFTA – India Trade and Economic Partnership Agreement (February 2024). Available online at: <https://www.efta.int/sites/default/files/documents/legal-texts/free-trade-relations/india/1.%20Main%20Agreement.pdf>. The parties provided: “3. The Parties share the objectives that: (a) the EFTA States shall aim to increase foreign direct investment from investors of the EFTA States into India by 50 billion (US dollars) within 10 years from the entry into force of this Agreement and an additional 50 billion (US dollars) in the succeeding 5 years [original footnotes 6 7]; and (b) the EFTA States shall aim to facilitate the generation of 1 million jobs [original footnotes 8] within 15 years in India from the entry into force of this Agreement, resulting from inflows of foreign direct investment from investors of the EFTA States into India.

Annex I: Tables of Decisions

References to climate or environment-related issues in agreements' committees

Meeting/Instrument	References to climate change and sustainability
EU-Chile	
11th EU-Chile Association Committee 3 October 2013 Brussels, Belgium	<ul style="list-style-type: none"> - Parties underlined their close views regarding sustainable development, commitment to a greener economy and increased engagement with civil society.
3rd Meeting of the EU-Chile Joint Consultative Committee 6 – 7 December 2018 Santiago, Chile	<ul style="list-style-type: none"> - Recognition that cooperation and mutual support are vital with a view to making progress on a joint agenda that would enable both Parties to tackle the most important global challenges set out in the United Nations Agenda 2030, helping to preserve peace, maintain multilateralism and achieve the global Sustainable Development Goals (SDGs). - Parties point out that the modernized Association Agreement should reflect the commitment of the Parties not to encourage trade or FDI by watering down domestic environmental, labour or health and safety legislative or regulatory standards, core labour standards, policies or legislation, as well as a commitment to improve laws and policies at the underlying levels of environmental and labour protection. - Parties underlined the importance of investment in new technologies to protect the environment, promote the efficient use of water and the industrialization of clean and renewable energy sources, inter alia by exploiting the rich diversity of natural resources, respecting international agreements and quality standards. - Parties reaffirmed their interest in and commitment to strengthening EU-Chile strategic partnerships to achieve the Sustainable Development Goals. In particular, the JCC should be seen as a common tool for implementing the 17 Sustainable Development Goals, which refer to partnerships in order to achieve the goals set.
XVII meeting of the EU-Chile Association Committee 23 September 2021 Online	<ul style="list-style-type: none"> - Parties analyzed future cooperation in green hydrogen in Chile. They highlighted the important transformative potential that green hydrogen has for creating green jobs, developing specialized human capital and promoting economic diversification. - Parties highlighted the success of the Chilean Presidency of COP25 and recognized the valuable support of the EU to Chile through the Euroclima+ program to play this leadership role. Both sides agreed to continue advocating for ambitious policies ahead of COP26 through bilateral cooperation and with their international partners based on a shared vision, ambitious NDCs and long-term strategies. - Parties are committed to working together to develop common approaches for better ocean governance and to advance issues of common interest, in particular marine protected areas, oceans and climate change, the legally binding international instrument for the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction and illegal and unreported and unregulated fishing.
Joint Statement on Trade and Sustainable Development by the European Union and Chile 2 December 2022	<ul style="list-style-type: none"> - Parties are determined to ensure that the Agreements fosters sustainability, so that economic growth goes together with the protection of decent work, the climate and the environment, in full adherence to the Parties' shared values and priorities, including support for green transition and promoting responsible and sustainable value chains. - Regarding their joint objective of addressing the urgent threat of climate change, the Parties underline their commitment to effectively implement the United Nations Framework Convention on Climate Change and the Paris Agreement adopted thereunder, including their commitments regarding their respective Nationally Determined Contribution. - Parties will, upon the entry into force of the interim Free Trade Agreement, initiate a formal review process of its trade and sustainable development aspects following Article XX [review Article in the TSD Chapter] in order to consider the incorporation, as appropriate, of additional provisions that may be deemed relevant by either Party at that time, including in the context of their respective domestic policy developments and their recent international treaty practice, as the Parties may consider appropriate. Such additional provisions may relate, in particular, to further enhancing the enforcement mechanism of the Trade and Sustainable Development chapter, including the possibility to apply a compliance phase and relevant countermeasures as last resort.

	- Parties will also consider the possibility of including the Paris Agreement on Climate Change as an essential element of the Agreements.
EU-Colombia-Ecuador-Peru	
V Meeting of the Trade Committee of the EU-Colombia-Ecuador-Peru Agreement Trade and Sustainable Development Subcommittee 10 - 12 December 2018 Quito, Ecuador	<p>Advancements in the implementation of the provisions on environmental issues of Title CDS</p> <p>- EU Presentation Deforestation: The EU highlighted the global challenge of deforestation, which leads to biodiversity loss, climate change and increased poverty. The EU announced the upcoming European strategy against deforestation that will be adopted in 2019. The EU invited parties to participate in the preliminary consultation works. Climate change: The EU acknowledged the vulnerability to the risks of natural disasters of the Andean countries and reaffirmed its support in the implementation of the Paris Agreement and the NDCs.</p> <p>- Ecuador Presentation The EU expressed its willingness to continue supporting the Ministry of Environment of Ecuador in implementing the REDD+ Action Plan and promoting decentralization, environmental management in the territory and strategies on climate change issues.</p> <p>EU Topics of Interest</p> <ul style="list-style-type: none"> • New EU strategy to enhance the implementation of the CDS chapters of EU trade agreements. <p>Regarding “monitoring and delivering results,” the EU emphasized that there is a range of actions, one of which is defining priorities by country, such as promoting the swift ratification of ILO conventions, strengthening occupational health and safety commitments and labour inspection, as well as promoting compliance with climate change commitments in the environmental pillar. The EU also indicated that it will act more promptly against breaches. Lastly, the EU highlighted the need for training and awareness-raising, citing as an example the Implementation Manual of Title IX of this Trade Agreement that is being developed for Ecuador.</p> <p>Exchange of experiences on national mechanisms as established in Article 281.</p> <p>Presentation by Peru</p> <p>- Among the main mechanisms within the framework of article 281, Peru pointed out the Climate Change Commission, National Commission of Biological Diversity, National Commission of Wetlands and National Commission on Desertification and Drought, as well as the Environmental Consultative Commission, specialized technical working groups and more recent mechanisms like <i>Dialoguemos</i>. Peru. This emphasized the variety of spaces reflecting the importance of citizen participation in environmental issues for the country. The regulation on transparency, access to public environmental information and citizen participation and consultation on environmental matters dating from 2009 and the various mechanisms implemented to facilitate access to environmental information were mentioned.</p> <p>- Peru noted that, given the dynamics of the environmental agenda, the mechanisms, procedures and spaces continue to strengthen and adapt to new challenges, expressing its willingness to address environmental issues related to the implementation of the Sustainable Development Title in the National Climate Change Commission once a year.</p> <p>- The EU thanked for the information on public participation mechanisms in environmental matters and the emergence of new programs like <i>Dialoguemos</i>. The EU took note of Peru’s willingness to include in the agenda of the National Climate Change Commission in the discussion with civil society on environmental issues related to the implementation of the Sustainable Development chapter in the National Climate Change Commission once a year.</p>

<p>VI Meeting of the Trade Committee of the EU-Colombia-Ecuador-Peru Agreement</p> <p>Trade and Sustainable Development Subcommittee report</p> <p>21 - 23 October 2019 Bogotá, Colombia</p>	<p>Presentation by the European Union: reference to the European Green Deal and deforestation:</p> <p>(1) To be the world's first climate-neutral continent by 2050, aiming to reduce emissions by 50% by 2030 and attempting to reach 55%. This strategy includes the first European climate law, the expansion of the ETS system and the possibility of having a carbon border tax compliant with the WTO.</p> <p>(2) Carry out the Sustainable Investment Plan and a just transition, which plans an investment of 1 trillion euros over the next decade and brings about changes in the European Investment Bank to establish the European Climate Bank.</p> <p>(3) Preserve the environment. This last line of action is crucial as it encompasses the new European strategy for biodiversity, a new action plan on the circular economy, the "from farm to fork" strategy and an initiative for zero pollution.</p> <ul style="list-style-type: none"> - Climate change as one of the causes of biodiversity loss. - The EU called on Parties to participate in the new Multi-Party Platform on deforestation and invited them to the forest conference to be held in Brussels at the beginning of February 2020. <p>Presentation by Colombia:</p> <ul style="list-style-type: none"> - National Development Plan, "Pact for Colombia, Pact for Equity" establishes in Chapter IV the Pact for Sustainability, where deforestation and biodiversity are part of national security, thus conceiving the National Defense and Security Policy for Legality, Entrepreneurship and Equity. - Highlights the importance of the Paris Agreement on Climate Change. <p>Presentation by Ecuador:</p> <ul style="list-style-type: none"> - Nature as a subject of rights. - National Development Plan 2017-2022 has set goals for deforestation reduction. - Organic Environmental Code (COA), 2018, is the most important standard on environmental matters. It covers various aspects such as: management of protected areas, sustainable forest management, environmental regularization, climate change, marine coastal management, environmental damage repair and citizen participation. - Regarding climate change management, it was noted that Ecuador is implementing measures for mitigation and adaptation. <p>Presentation by Peru:</p> <ul style="list-style-type: none"> - Emphasized strengthening the institutionality of comprehensive climate change management through the multi-actor, multi-level and participatory process of constructing the proposal for the framework law on climate change.
<p>VII Trade and Sustainable Development Subcommittee Meeting of the EU-Colombia-Ecuador-Peru Agreement</p> <p>9 - 12 November 2020 Videoconference organized by the EU</p>	<p>Presentation by the European Union</p> <ul style="list-style-type: none"> - European Green Deal as a new political and legislative framework to deal with the environmental crisis, including climate crisis, loss of biodiversity, over-exploitation of resources and contamination. - 2030 Climate Objectives Plan: (1) to raise EU climate ambitious; (2) to raise the objective of reducing net emissions of GHG to less than 55% by 2030; and (3) to secure the EU position as world leader in the fight against climate change, to turn into the first continent with climate neutrality by 2050. - Focus of the 2030 Climate Objectives Plan: (1) energy and buildings; (2) transportation and industry; and (3) land use and forest management sector <p>Presentation by Peru</p> <ul style="list-style-type: none"> - Reinforced the importance of climate change, circular economy and biodiversity protection for the country and ask for more information on the implementation of the European Green Deal. - Peru highlighted the priorities for climate action 2020-2021, including the implementation of the Framework Law on Climate Change and its Regulations, the creation and installation of the High Level Commission on Climate Change, the process of updating and implementing its Determined Contributions at the National Level by 2030, the preparation of the National Strategy against Climate Change by 2050 and the sustainable management of forests. <p>Presentation by Colombia</p> <ul style="list-style-type: none"> - Reaffirmed their commitment to the Paris Accord and highlighted two main priorities: the update of NDCs and the update of the long-term strategy, which aspire to reach a 90% decarbonization in comparison with 2015 levels. - National Circular Economy Strategy: state measure with multiple impacts, including decarbonization and circular economy.

	<p>Presentation by Ecuador</p> <ul style="list-style-type: none"> - Reinstate their commitment to compliance with the Paris Agreement and presented the main management and regulatory instruments implemented: NDC Support Program, the National Climate Financing Strategy, the development of the National Adaptation Plan (PLANACC), the National Climate Change Mitigation (PLANMICC) and the Inclusion of Climate Change in Territorial Planning.
<p>Joint Declaration of the Trade and Sustainable Development Subcommittee in the Civil Society Forum, VII Meeting</p> <p>13 November 2020</p>	<p>The same as those indicated at the VII Meeting of the Sub-Committee on Trade and Sustainable Development.</p>
<p>VIII Trade and Sustainable Development Subcommittee Meeting of the EU-Colombia-Ecuador-Peru Agreement</p> <p>23 - 29 November 2021</p> <p>Videoconference organized by Peru</p>	<p>Presentation by the European Union</p> <ul style="list-style-type: none"> - Underlined that responses to the challenges created by climate change and environmental degradation require global solutions. In this regard, the EU confirmed its commitment to shared solutions with its international partners, building through green diplomacy and development cooperation. - For biodiversity protection, the necessary measures to ensure fair and equitable economic growth. The EU highlighted that more than 30 per cent of the investment funds of the post-pandemic recovery plan and its 2021-27 budget are dedicated to financing the Green Deal. - As regards tackling climate change, the EU presented the Carbon Border Adjustment Mechanism (CBAM), which is designed to support the adoption of Green Deal policies in third countries and to minimize the risk of carbon leakage which, by increasing global emissions, would jeopardize the EU's climate ambition. <p>Presentation by Ecuador</p> <ul style="list-style-type: none"> - Ecuador's Cero Carbon Programme and Compact for Transition to Decarbonisation as concrete measures to take action in response to climate change. <p>Presentation by Perú</p> <ul style="list-style-type: none"> - Strategic axes of the National Environmental Policy (PNA) 2030 relate to climate change. - National Plan for Adaptation to Climate Change was adopted in 2021 towards 2050. <p>Presentation by Colombia:</p> <ul style="list-style-type: none"> - Reported that the Climate Action Law was based on the Congress of the Republic and is hoping to rely on this instrument, which includes some actions such as: (1) sustainable management of 2,5 million hectares through conservation contracts to stabilize the agricultural border; (2) reaching 10 % of companies implementing climate change adaptation actions; and (3) A minimum of 30 % of the seas and continental areas under protection categories or complementary conservation strategies. <p>All partners:</p> <ul style="list-style-type: none"> - Recognized activities of cooperation under Article 286 in terms of climate change.
<p>Joint Declaration of the Trade and Sustainable Development Subcommittee in the Civil Society Forum, VIII Meeting</p> <p>29 November 2021</p>	<p>The same topics as those indicated at the VIII Meeting of the Sub-Committee on Trade and Sustainable Development.</p>

<p>9th Meeting of the Subcommittee on Trade and Sustainable Development of the EU-Colombia-Ecuador-Peru Agreement</p> <p>24-27 October 2022 Videoconference organized by Ecuador</p>	<p>Presentation by the European Union</p> <ul style="list-style-type: none"> - The energy crisis will not be a reason for not meeting climate commitments, but on the contrary to strengthen their sustainable strategies. - The EU referred to its work on climate diplomacy to communicate messages to third countries, to help them transition to a zero-carbon economy, including through funding. - Corporate Sustainability Due Diligence Directive proposal: The consequences of the company's activities on the environment, human rights and climate change should be considered relevant for the purposes of this duty of directors, including in the short, medium and long term. <p>Presentation by Colombia</p> <ul style="list-style-type: none"> - With the adoption of the Paris Agreement, Colombia committed to concrete actions to reduce GHG emissions. Also, Colombia has significantly increased climate action targets, moving from a 20% GHG reduction target for 2030 (NDC 2015) to a 51% GHG reduction target by 2030 (NDC 2020). - Colombia mentioned that there are additional actions in place: i) Strategy 2050, ii) Climate Action Law, iii) Environmental Crime Law. <p>Presentation by Ecuador:</p> <ul style="list-style-type: none"> - Ecuador's Cero Carbon Programme and Compact for Transition to Decarbonisation as concrete measures to take action in response to climate change. - The National Climate Change Adaptation Plan is being prepared to increase adaptive capacity in the prioritized sectors of the National Climate Change Strategy, thus reducing the country's climate risk.
EU-Mercosur	
<p>EU27-LAC Informal Ministerial Meeting</p> <p>Berlin, December 14th, 2020</p>	<p>Ministers acknowledged that economic recovery from the pandemic cannot be sustainable without addressing the global challenges of climate change and biodiversity loss and moving towards the circular economy; expressed their conviction that the Agreement should be implemented in such a way so as to provide benefits to both sides in the economic, social and environmental dimensions of sustainable development; Parties noted that the Agreement will enhance its potential to contribute to the shared overarching objective of sustainable development, observing the principles and guidance of the 2030 Agenda for Sustainable Development.</p>

Draft EU-Mercosur Joint Instrument February, 2023	<p>Conviction to improve their environmental legislation; not to regress in terms of protection; Timely communication and implementation of NDCs; engagement in mitigation and adaptation measures; effectively implement MEAs; combat illegal logging; halt and reverse land degradation by 2030; eliminate sources of wild fires; develop sustainable value chains; support local indigenous communities.</p>
Chief Negotiators Meeting Buenos Aires, March 7th and 8th, 2023	<p>Discussions focused on the three dimensions of sustainable development (economic, social and environmental) as a framework for deepening the bi-regional partnership. both delegations agreed on the importance of intensifying the dialogue in order to finalise a mutually beneficial and balanced agreement.</p>
Communication from Mercosur September 16th, 2023.	<p>Willingness of the parties to finish the agreement; open to negotiate a S&D instrument; no sanctions will be accepted by Mercosur; capacity to implement public policies; cooperation.</p>

Communication from Brazil October 20th, 2023	Climate Fund of 12 billion USD, not to use deforestation as a pretext to use tariffs, cooperative approach, capacity building programs.
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Source: Author's elaboration based on publicly available declarations and minutes from committees and subcommittees

Meeting/Instrument	References to climate change and sustainability
EU-Central America	
I Meeting of the Sustainable Development Committee of the EU-Central America Agreement Trade and Sustainable Development Subcommittee report 14 November 2014 Managua, Nicaragua	<p>Presentations on progress in the implementation of the ILO Fundamental Conventions and Multilateral Environmental Agreements related to trade.</p> <p>The entry into application of the Gaborone Amendment to CITES was highlighted, thanks to its ratification by the Central American countries. It was also underlined that all Parties to the Association Agreement have now ratified the Rotterdam Convention.</p> <p>Information was provided on recently adopted Conventions and Protocols and their state of ratification, in particular the new Protocol on Forced Labour, the Convention on Maritime Labour and the Convention on Domestic Workers (C189), the Minamata Convention and the Nagoya Protocol.</p> <p>It was highlighted that the work of the Board should focus on the identification of positive links between trade and sustainable development, especially in the following fields:</p> <ul style="list-style-type: none"> - Promotion of trade in products that include environmental and social sustainability in their model of production. - Strengthening of the protection of natural resources as a motor of economic growth - Promotion of initiatives in which the international environmental and social agenda and trade are mutually supportive - Promotion of decent work in production chains.
II Meeting of the Sustainable Development Committee of the EU-Central America Agreement Trade and Sustainable Development Subcommittee report 27-28 May 2015 Brussels, Belgium	<p>The Parties exchanged information on the establishment and progress in the work of the advisory groups.</p> <p>Concerning multilateral environmental agreements:</p> <ul style="list-style-type: none"> - Costa Rica reported that in preparation for COP 21 it will submit its national contribution (INDC) in September this year. - Guatemala explained the problem of climate change, especially with respect to drought and also on progress in implementation, highlighting improvements to legislation, capacity building, preparation of technical reports. - Honduras emphasised issues such as improvements to legislation, creation of an inter-institutional committee on climate change, inter-institutional skills training, partnerships, cooperation with international institutions specialising in the field of finance and technical assistance as well as projects and investment in renewable energy and actions in the forest sector.

	<ul style="list-style-type: none"> - Nicaragua drew attention to the detrimental effects of climate change, in particular in highly vulnerable areas of Nicaragua, which are experiencing a period of drought for the second consecutive year. - Panama stated that it had reactivated its national committee for climate change and is defining its INDCs, which will be presented later this year. - El Salvador highlighted the work of the Government in continuing to strengthen the agricultural sector and industry in this area through the Environmental Strategy of Adaptation to and Mitigation of Climate Change in the Agriculture, Forestry and Aquaculture Sectors, which aim to strengthen the agriculture sector in the light of damaging effects of climate change. - The European Union stated that it foresees that it will meet or exceed its target for greenhouse gas reduction target by 2020. <p>Members also shared progress and state of play of international labour conventions:</p> <ul style="list-style-type: none"> - Costa Rica described progress made in implementation of Convention 182 on the worst forms of child labour. - Guatemala highlighted progress on Convention 29 on Forced Labour, describing work of the Ministry of Labour for the implementation of this Convention with regard to the signature of the Protocol, specifically on issues relating to human trafficking, child exploitation and other related aspects. - El Salvador presented progress in the implementation of the Convention on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, highlighting in particular its compliance and actions carried out during the years 2011-2014. - Nicaragua presented progress in the implementation of Conventions 87 on Freedom of Association and Protection of the Right to Organise and Convention 98 on the Right to Organise and Collective Bargaining. - Panama informed the Board that the new National Government had ratified Conventions 144 on Tripartite Consultation and 189 on Domestic Work. - Honduras provided information on actions for the fulfilment of the ILO conventions. - The EU described recent developments as regards ratification of ILO conventions since our last meeting and in particular the ongoing work to ratify the Forced Labour Protocol. <p>Board agreed to work on the following issues:</p> <ul style="list-style-type: none"> - Exchange of information and best practices on trade-related environmental regulations - Encouraging actions that promote trade and investment in environmental technologies and services, renewable energy and energy efficiency - Promoting trade in products that respond to sustainability considerations - Promote the economic benefits of the conservation and sustainable use of the environment through activities such as sustainable tourism, payment for environmental services schemes and carbon markets, in particular on deepening understanding of the European scheme (ETS). <p>EU presentation on cooperation instruments for the period 2014 to 2020 and general programming of cooperation for the region and countries with bilateral programmes, including themes linked to the agenda of the Board, in particular climate change and risk management, regional economic integration, decent work, security and the rule of law, including cross-cutting aspects of sustainability in economic, environmental and social terms.</p>
III Meeting of the Sustainable Development Committee of the EU-	The Board exchanged information on developments in the establishment and composition of Advisory Groups.

<p>Central America Agreement</p> <p>Trade and Sustainable Development Subcommittee report</p> <p>17 June 2016 Tegucigalpa, Honduras</p>	<p>Progress in the implementation of the articles of the Title on Trade and Sustainable Development related to labour aspects in the framework of the ILO</p> <ul style="list-style-type: none"> - Costa Rica on the recent approval of the Reform on Labour Procedural Law or Act "Law on Reform of Labour Procedures", which is the most important reform of labour law in the last sixty years. - El Salvador set out what it had presented at the ILO Conference with regard to ILO Convention 87 on Freedom of Association. - Guatemala stated that an ILO mission that took place in 2015 in relation to the implementation of ILO Convention 87 had developed a list of indicators based on information presented by Guatemala. - Honduras informed that a new "Labour Code" has been submitted to the National Congress for approval. - Nicaragua highlighted the functioning of the "model alliance of government, workers and small, medium and large businesses" which has promoted the adoption of key decisions for the economic and social development of the country in a harmonious way in all sectors. - Panama highlighted significant progress on child labour, freedom of association and forced labour, which show the effective work that MITRADEL and other institutions of the State have carried out to effectively implement the conventions on fundamental labour rights. - Panama communicated its aspiration to become a country of zero tolerance to the offence of human trafficking and the progress in the ratification of the 2014 Protocol on Forced Labour (Convention 29). - The EU mentioned its participation in a number of initiatives on global value chains and the promotion of decent work in them, collaborating in particular with the ILO and the OECD. <p>Progress in the implementation of the articles of the Trade and Sustainable Development Title relating to the environment</p> <ul style="list-style-type: none"> - Costa Rica indicated that under the Paris Agreement it had undertaken to reduce per capita emissions of greenhouse gases from the current 2.4 tonnes to 1 tonne in 2050, which exceeds the recommendations of the international scientific community. - El Salvador reported that in its Five-Year Plan it promotes sustainable economic development that promotes the compatibility of the economy and the protection and conservation of natural resources. - Guatemala reported on progress of the Ministry of the Environment and Natural Resources in the implementation of Multilateral Environmental Agreements. - Honduras has adopted most international policy instruments for the sound management of chemicals and gradually incorporating them into national development policies. - Nicaragua highlighted ongoing action to mitigate the effects of climate change, in particular through reforestation, silvopastoral systems, prevention of forest fires and the sustainable management of river basins, among others. - Panama informed of its progress in a number of agreements, including CITES, Cartagena and Nagoya Protocol, Paris Agreement, ICIREDD, Kyoto Protocol, among others. - The European Union underlined its participation for the first time as a member rather than as observer in the Conference of the Parties to CITES in Johannesburg in September 2016, following the entry into force of the Gaborone Amendment to the Convention.
<p>IV Meeting of the Sustainable Development Committee of the EU-Central America Agreement</p>	<p>State of progress of implementation of labour in the framework of the ILO</p> <ul style="list-style-type: none"> - The EU reported on progress in the ratification by Member States of the 2014 Protocol to the Forced Labour Convention and underlined its commitment to promote its ratification.

<p>Trade and Sustainable Development Subcommittee report</p> <p>13 June 2018 Brussels, Belgium</p>	<ul style="list-style-type: none"> - Costa Rica underlined the important impact that its accession process to the Organisation for Economic Co-operation and Development (OECD) had had in strengthening policies on labour and employment, encouraging it to adopt policies and regulations of the highest standards. - EL Salvador stressed the government's commitment to compliance with the provisions of ratified ILO conventions. - Guatemala updated on the status in relation to Convention 87 concerning Freedom of Association and Protection of the Right to Organise. - Honduras emphasised aspects related to the implementation of Convention 81 on Labour Inspection, highlighting the approval of the new Labour Inspection Law and the process of development of regulations that will contribute to the implementation of this law. - Nicaragua stated that it would present relevant developments at a later stage and undertook to answer in written form questions made by the European Union. - Panama presented progress in the implementation of ILO Conventions 138 and 182 on Child Labour, indicating a continued reduction in the number of cases of child labour, with support of technical assistance from the ILO and funding from the US Department of Labour. <p>State of progress of implementation of the environment</p> <ul style="list-style-type: none"> - The EU presented its overall policy on climate change, emphasising its target of becoming the economy with the lowest consumption of CO2 per unit of gross national product in the G20 and its commitment to the Paris Agreement. - Costa Rica stated the importance that its accession process to the Organisation for Economic Co-operation and Development (OECD) had had in the development of their environmental policies; encouraging it to adopt policies and regulations of the highest standards. - EL Salvador noted progress in the following areas: legal and institutional framework, infrastructure, water, energy, agriculture and forestry, which were notified on 15 November 2015 as priority areas in its nationally determined contribution under the Paris Agreement. - Guatemala presented the implementation of the UN Framework Convention on Climate Change consistent with Paris Agreement commitments. - Honduras reported on progress in the implementation of the Basel, Stockholm and Minamata Conventions and the Montreal Protocol. - Nicaragua stated that it would present relevant developments at a later stage. However, it pointed out that Nicaragua had acceded to the Paris Agreement. - Panama provided information on its General Law on Environment which for the first time includes a chapter on climate change.
<p>V Meeting of the Sustainable Development Committee of the EU-Central America Agreement</p> <p>Trade and Sustainable Development Subcommittee report</p> <p>24-25 June 2019 Antigua Guatemala, Guatemala</p>	<p>The EU stated that it intends to carry out an ex-post evaluation on the implementation of the trade pillar of the Agreement, covering economic, environmental and social impacts.</p> <p>Progress on the implementation of labour provisions of the ILO</p> <ul style="list-style-type: none"> - The EU presented recent developments concerning the ratification by EU Member States of Protocol 29 on forced labour; legislation concerning working conditions and the establishment of the European Labour Authority. - Nicaragua highlighted the country's efforts to ensure labour rights, with a focus on gender, child labour, health and safety at work and freedom of association and collective bargaining, in addition to the implementation of actions to ensure compliance with labour law in 2017 and 2018. - Costa Rica highlighted progress in implementing the fundamental ILO conventions, highlighting progress specifically in implementing

	<p>concrete actions on issues of collective rights, eradicating child labour, eradicating forced labour as well as equality and non-discrimination.</p> <ul style="list-style-type: none"> - Guatemala referred to the decision reached by the ILO Governing Body in its 334th (November 2018) on the closure of the complaint concerning a breach by Guatemala of the Convention on Freedom of Association and Protection of the Right to Organise, 1948 (No.87) under Article 26 of the ILO Constitution, with an emphasis on b). - Guatemala also commented on the establishment of the Tripartite National Commission on Labour Relations and Freedom of Association; the Roadmap on Freedom of Association and Collective Bargaining; and placed emphasis on the importance of social dialogue and tripartism. - Honduras stated that in relation to the ILO Forced Labour Convention, actions have been taken under the Strategic Plan against Sexual Exploitation and Trafficking Of Persons in Honduras (2016-2022), coordinated by the Inter-Institutional Commission to Combat Commercial Sexual Exploitation and Human Trafficking (CICEST). - EL Salvador stated the results of actions taken for compliance with the various Conventions ratified by the country related to labour in the Association Agreement cannot be communicated due to the fact that there had been insufficient time to carry out an analysis of the information set out in a report covering June 2018 - May 2019, its submission to the Legislative Assembly by the Ministry of Labour and Social Security is pending. - Panama reported that it has made progress in implementing Conventions 29 and 105 on Forced Labour during the last year, namely through the regulation of the National Policy against Trafficking in People, the creation of a temporary resident migration category and work permit under Humanitarian Permit for Protection that were made part of Panamanian law in 2019 and the drafting of repatriation, return and resettlement protocols for victims of trafficking in persons. <p>Progress on the implementation of the environmental dimension of sustainable development</p> <ul style="list-style-type: none"> - The EU made three presentations related to progress on the environment. In its first presentation, it provided information on the new Directive on Single Use Plastics (Directive 2019/904), which uses a number of approaches to address the complex topic of reduction of single-use plastics. - Nicaragua highlighted the actions it is carrying out to implement the commitments of the United Nations Framework Convention on Climate Change, progress made in the process of ratification of the Kigali Amendment to the Montreal Protocol and the Amendment to the Basel Convention, the latter with respect to the inclusion of additional wastes regarded as hazardous. - Costa Rica reported on progress in strengthening its implementation of the Basel Convention, notably by developing regulations that set high standards for the handling and transboundary movement of waste, strengthening local controls and capacities in this regard. - Guatemala reported on progress on climate change; Consistent with the SDGs, it works on climate action based on the K'atun 2032 Plan. Other important issues relate to a change in the energy matrix, renewable energy and a National Information System. - EL Salvador outlined a number of developments in the area of the environment in relation to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and the Stockholm Convention on Persistent Organic Pollutants and expressed its readiness to report on progress on other multilateral instruments at the request of the EU.
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	<ul style="list-style-type: none"> - Honduras reported on progress in the implementation of the Climate Change, Minamata, Stockholm, Basel, Rotterdam and CITES Conventions. <p>Cooperation</p> <ul style="list-style-type: none"> - The EU Regional Cooperation Office reported financial support of EUR 120 million for Central America for the period 2014-2020.
<p>VI Meeting of the Sustainable Development Committee of the EU-Central America Agreement</p> <p>Trade and Sustainable Development Subcommittee report</p> <p>18-19 November 2020 Video Conference</p>	<p>Overview of relevant policy developments in the EU and CA: Short recap of information exchanges held in the run-up to the TSD Board meeting</p> <p>Civil society involvement in TSD Title implementation: process and views expressed</p> <ul style="list-style-type: none"> - EU addressed the agenda item by noting that Advisory Groups (DAGs) are essential, it had frequent exchanges with EU DAGs. - EU brought attention to the recommendations contained in the Declaration submitted by the joint EU and Central-American DAGs. - Central-American countries underlined that specific DAG arrangements and consultation modalities varied per region and country, in accordance with the flexibility reflected in the relevant provisions of the TSD chapter. <p>Implementation of labour provisions in TSD chapter</p> <ul style="list-style-type: none"> - EU highlighted the priorities: COVID-19 response matters (including protection of vulnerable groups and social dialogue), child labour as well as violence against trade unionists (regrettably still a widespread problem in some Central-American countries). - Costa Rica highlighted its progress in addressing issues related to collective rights, eradicating child and forced labour, as well as promoting equality and non-discrimination. - El Salvador thanked the European Commission for the offer to cooperate on labour issues. It stressed the efforts it had made over the past 5 years, while also recalling budget constraints. - Guatemala announced that in the framework of ILO Conventions 29 and 105 (forced labour) and 138 and 182 (child labour) it had established an inter-institutional coordination mechanism to step up the fight against labour exploitation and child labour. - Nicaragua highlighted progress made in restoring labour rights of Nicaraguan workers. The effects of COVID 19 in the labour sector had been less prominent than in many other countries due to the careful and responsible management of productive activities in particular thanks to shared responsibility of workers, government and employers. - Panama stressed the crucial importance of maintaining tripartite dialogue to address problems and seek adequate and agreed solutions to reactivate the economy and guarantee labour rights and employment. - Honduras, reporting on the implementation of ILO Convention 87 on Freedom of Association and Protection of the Right to Organize, referred specifically to compliance with the recommendations made by the ILO's Direct Contacts Mission. <p>Implementation of environmental dimension of sustainable development</p> <ul style="list-style-type: none"> - The EU gave an introduction on two topics: the European Green Deal (in particular the EU's new Biodiversity Strategy for 2030 and planned initiatives to tackle worldwide deforestation) as well as the EU's Climate Strategy (which set out detailed measures to reduce EU greenhouse gas emissions by 55% in 2030 and reflected the EU's resolve to become the first climate neutral continent in 2050). - Costa Rica underlined the urgency of launching a green post-COVID-19 recovery plan. In Costa Rica, this encompassed three key aspects of its economy: green, blue and orange. The green economy focused on

	<p>low-carbon and resource efficient processes that value ecosystemic services, while the blue economy acknowledged and protected the rich natural capital in oceans and coastal areas. Costa Rica's approach also valued the orange economy, which focused on creative goods and services, values innovation and high-skill jobs.</p> <ul style="list-style-type: none"> - Guatemala confirmed its commitment to implement its recently launched National Long-Term Strategy on Development with Low Greenhouse Gas Emissions, which aimed at efficient, inclusive and participatory economic development, in line with the government's priorities. Guatemala's climate ambition, to be reflected in updated national emission reduction targets, were focused various sectors. - Nicaragua highlighted the launch of its National Policy for Mitigation and Adaptation to Climate Change and the creation of a National Response System to Climate Change. This established a strategic national frame of reference to develop a set of guidelines and actions to mitigate climate change and face the challenges of adaptation. Policy measures inter alia related to agro-ecological production, development of forest plantations and reduction of extensive livestock practices. - Panama reported that, in compliance with the Paris Agreement, in December it would present the first update of its Nationally Determined Contribution, with new goals for climate mitigation and adaptation and emission reduction. - El Salvador gave a presentation on progress made in implementing the Multilateral Environmental Agreements listed in the TSD chapter, highlighting relevant initiatives and strategies. - Honduras reported on progress in the implementation of its chemicals agenda: the development of a policy framework and policy measures related to persistent organic pollutants and waste from electronic devices. It also provided information on the development of regulations on artisanal, small-scale mining and the control of mercury products. <p>State of play and next steps regarding the implementation of the provisions on Trade Favoured Sustainable Development in the TSD Title</p> <ul style="list-style-type: none"> - Costa Rica briefly presented its trade strategy in the area of sustainable production. It described public initiatives such as the "Proyecto Crecimiento Verde", an award-winning initiative operated by the Costa Rican Foreign Trade Promoter (PROCOMER) that is using seed capital to promote green innovation and sustainable production. - Nicaragua and Honduras highlighted the positive impacts that increased trade and sustainability efforts induced by the EU-Central America Agreement had had. At the same time, they underlined the challenges, especially for small producers, to comply with new standards and requirements in the EU market. <p>Ex post evaluation of the Agreement</p> <ul style="list-style-type: none"> - The European Commission reported on preparatory work for its planned ex post evaluation of the Trade Pillar of the EU-Central-America Association Agreement.
<p>VII Meeting of the Sustainable Development Committee of the EU-Central America Agreement</p> <p>Trade and Sustainable Development Subcommittee report</p>	<p>Overview of relevant policy developments in the EU and CA</p> <ul style="list-style-type: none"> - European Commission's Directorate-General for Trade (DG TRADE) presented a policy update on EU initiatives which include elements of Responsible Business Conduct (RBC). - Costa Rica provided an update on the ongoing negotiations of the Agreement on Climate Change, Trade and Sustainability (ACCTS) between Norway, Iceland, Switzerland, Fiji and Costa Rica. <p>Overview of relevant EU cooperation projects in CA</p>

<p>31 May and 1 June 2021 Video Conference</p>	<ul style="list-style-type: none"> - SIECA (Secretaria de Integración Económica Centroamericana) made a presentation on the activities carried out within Components I and III of the Central American regional economic integration programme INTEC, financed by the EU, related to trade and sustainable development for Central America. - Reported on projects such as “EKO BOOTCAMP 2.0”; “Connecting Central America”; and “Linking Central American Women's Enterprises with the Crafts and Interior Decoration Market”. - PROCAGICA (Central American Programme for Integrated Coffee Rust Management) supports applied research in good practices aimed at reducing vulnerability and promotes integrated management of coffee plantations. - AGROINNOVA works on strengthening the capacities of National Technical Agroforestry Committees, facilitates knowledge exchange in research and innovation, helps showcase experiences of technological innovation from small producers and supports the regional hub for agricultural innovation. <p>Implementation of labour provisions in the TSD title</p> <ul style="list-style-type: none"> - Costa Rica reported on the main progress achieved during the last period regarding the compliance and implementation of the fundamental ILO agreements. - Guatemala referred to issues of Labour Relations and Freedom of Association. Among them, they pointed out that the Public Ministry has closed 27 of 90 cases of homicides of trade union leaders and members; the Ministry has also carried out 101 risk analyses, which have resulted in the establishment of 94 perimeter security measures and 3 personal security measures. - El Salvador shared progress in compliance with the ILO Conventions incorporated in the Association Agreement. It stressed its firm commitment to the construction and strengthening of Tripartite Social Dialogue, in order to ensure full compliance with the ratified ILO Conventions, as well as the promotion of specific actions, such as the establishment of strategies and policies obtained through consultative processes at national level. - Honduras informed that it seeks to provide a response to the demands and enquiries both nationally and internationally regarding compliance with labour legislation and international labour agreements. - Nicaragua reported on the fulfilment of its labour commitments within the framework of the Fundamental Conventions of the ILO during the period November 2020 - April 2021, in particular on the progress and implementation activities in the areas of: Progressive eradication of child labour, its worst forms and the restitution of labour rights to adolescent workers; Freedom of association; Collective bargaining; Equality and non-discrimination in employment. - Panama reported the progress that its Government is making to achieve the economic and social recovery of the country, to face the effects of the COVID-19 pandemic. <p>Ex-post evaluation of the Agreement: state of play and next steps</p> <ul style="list-style-type: none"> - The EU referred to the evaluation of the Trade Pillar of the Association Agreement that it is carrying out (the process is outsourced to an external consultancy through a call for tender procedure). <p>State of play and next steps regarding the implementation of the environment-related provisions in the TSD Title</p> <ul style="list-style-type: none"> - Each Party made a presentation on its main progress in environmental-related matters related to article 287 of the Title on Trade and Sustainable Development.
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	<p>State of play and next steps regarding the implementation of the provisions on Trade Favours Sustainable Development in the TSD Title</p> <ul style="list-style-type: none"> - The EU and Central America discussed the situation and prospects for organic agricultural production in the EU and in Central American countries. The exchange of views provided both parties useful insights into the respective conditions for organic agricultural production, trade patterns and product categories, the legal framework as well as challenges and opportunities relevant to further promote trade in organic products as trade in organics has the potential to yield benefits in terms of sustainability.
<p>VIII Meeting of the Sustainable Development Committee of the EU-Central America Agreement</p> <p>Trade and Sustainable Development Subcommittee report</p> <p>31 May and 2 June 2022 Video Conference</p>	<p>Ex post evaluation of the Agreement: short presentation of selected results related to Trade and Sustainable Development (contractor) and discussion</p> <p>Overview of relevant policy developments in the EU and CA, focusing on initiatives related to Trade Favours Sustainable Development</p> <ul style="list-style-type: none"> - The EU presented the European Commission's proposal for an EU Carbon Border Adjustment Mechanism, a new way of pricing carbon in imports to the EU. Central American countries asked questions regarding the new measure. - The EU also presented the European Commission's proposal for a regulation on deforestation-free product. - Costa Rica presented its Foreign Trade Gender Strategy, including respective objectives and achievements, notably regarding the employability of women and their role in export value chains. - Guatemala presented the initiative of a cooperation agreement between the Ministry of Economy, the Civil Association Centre for the Action of Corporate Social Responsibility in Guatemala and the Association of Public Accountants and Auditors of Guatemala. <p>Implementation of the labour-related provisions in the TSD Title</p> <ul style="list-style-type: none"> - EU enquired Central American countries about a series of measures. The Parties agreed to follow up in writing and at bilateral meetings in the margins of the planned EU-Central America conference on the implementation of ILO labour conventions. - Costa Rica reported on the main progress during the last period regarding compliance and implementation of the ILO core conventions. - El Salvador reported on progress achieved regarding the compliance with the fundamental ILO conventions. - Guatemala presented a series improvements regarding Key Indicators. - Honduras stressed that the Government is developing several measures aimed at eradicating child labour within the framework of the "National Commission for the Gradual and Progressive Eradication of Child Labour" through the Protocol of Organization, Adoption and Marginalization of the Committees for the Prevention of Child Labour, the Protocol on the Referral of Children; The Regulations on Protected Adolescent Labour, the Approval of the Seal of Child Labour regulations and the Roadmap for the Elimination of Child Labour in All Its Forms 2021-2025. <p>Implementation of the environment-related provisions in the TSD Title</p> <ul style="list-style-type: none"> - The EU reported on two bilateral meetings it held on 11 May and 19 May 2022 with Guatemala. - The EU stressed that Mesoamerican forests play a vital role in the preservation of land and their protection is key. - Costa Rica emphasised the urgent need to act on the climate crisis with a just and inclusive transition approach. - El Salvador reported on its progress made in complying with Multilateral Environmental Agreements (MEAs), highlighting that in

	<p>2021, a consumption of 3.97 ODP tons was achieved, which represents a positive impact for mitigation of climate and stratospheric ozone layer effects.</p> <ul style="list-style-type: none"> - Guatemala, through its Ministry of Economy, apologised for not having the participation of its Environmental Authority, due to a last minute inconvenience. - Honduras reported on the implementation of the agenda of chemicals and hazardous waste, biodiversity, climate change and ozone-depleting substances. - Panama reported that, during the year 2020 and in compliance with the commitments acquired before the UNFCCC, under an active process at all levels of state the country carried out the process of updating its First Nationally Determined Contribution. <p>Review of input received from the DAGs and preparation of the meeting between the Trade and Sustainable Development Board and the Civil Society Dialogue Forum</p>
<p>IX Meeting of the Sustainable Development Committee of the EU-Central America Agreement</p> <p>Trade and Sustainable Development Subcommittee report</p> <p>26 and 27 June 2023 San Salvador, El Salvador and through Zoom platform.</p>	<p>Reports on the labor-related aspects of the bilateral meetings (EU with each country of Central America) held ahead of the TSD Board meeting</p> <ul style="list-style-type: none"> - Each bilateral relationship was reviewed. Next steps were agreed on <p>Next the members reviewed topics of regional interest</p> <p>Freedom of association</p> <ul style="list-style-type: none"> - The EU mentioned that in the bilateral meetings it had learned about the implementation of measures in some Central American countries aimed at promoting freedom of association and collective bargaining; the EU also highlighted the need to advance in actions to enable the formation of trade unions at the sectoral level. - El Salvador highlighted the transparency process that is currently being conducted, the support for the strengthening of trade union associations and the efforts for the effective application of the right to organize. - Guatemala emphasized that it is making every effort to strengthen its institutions and to ensure the rights and freedoms of trade unions and workers. - Panama referred to the efforts made in collaboration with the United Nations Children's Fund (UNICEF) for the approval of Law 285, which creates a System of Guarantees and Comprehensive Protection of the Rights of Children and Adolescents and provides formal tools for public institutions to strengthen actions aimed at eradicating child labor. - El Salvador emphasized the efforts made by the country towards the eradication of child labor, notably in the sugar cane sector and acknowledging the great work of the sugar unions in this process. - Nicaragua reported on the measures taken by the Government to eradicate child labor as a priority on Nicaragua's political and social agenda, in compliance with its ratification of the Convention on the Rights of the Child, Convention 138 "Minimum Age Convention" and Convention 182 "Worst Forms of Child Labor Convention". <p>Review of the main developments in the EU and Central America, focusing on trade-related initiatives that favor sustainable development</p> <ul style="list-style-type: none"> - EU presented its updates related to the June 2022 Communication on the review of its Trade and Sustainable Development (TSD) policy. - Panama presented its Mujer Exporta program, aimed at women entrepreneurs, which seeks to boost, promote and strengthen the competitiveness of exporting companies and of those with export potential, through advisory services, technical assistance, training and promotion to enable companies led by women to enter international trade and improve gender equality levels.

	<p>Implementation of the environmental provisions of the Title</p> <ul style="list-style-type: none"> - The Parties held bilateral meetings (EU with each Central American country) prior to the Board meeting, in which they addressed the progress, challenges and issues of interest related to the implementation of the environmental commitments established in the Title; and provided answers to the inquiries sent in advance by the EU with emphasis on environmental protection and the fight against climate change; in addition, the Parties identified priorities for cooperation in these areas. During the Board meeting, the Parties presented their reports on the main aspects discussed at the bilateral meetings. <p>Follow-up discussion on focus topics of regional interest, including the EU Regulation on deforestation-free supply chains.</p> <ul style="list-style-type: none"> - The Parties engaged in a discussion on priority topics of regional interest, regarding the EU Regulation on Deforestation-Free Supply Chains. <p>Presentation of relevant ongoing cooperation projects and upcoming cooperation initiatives on environmental matters</p> <ul style="list-style-type: none"> - The European Commission, through the Directorate-General for International Partnerships (DG INTPA), provided information on the EUROCLIMA+ Program, a presentation was also given on the AL-INVEST Verde Program
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Annex II: Model Joint Instruments

A. EU-Mexico Joint Instrument

JOINT STATEMENT ON TRADE AND SUSTAINABLE DEVELOPMENT BY THE EUROPEAN UNION AND THE UNITED MEXICAN STATES

The Parties,

RECALLING their shared values and shared commitment to the highest standards of labour, safety, environmental and consumer protection;

RECALLING the announcement of a modernised Agreement in Principle in 2018 to deepen their economic ties while addressing the risks created by the Climate Crisis;

RECOGNISING their shared obligations under the Paris Agreement, the Convention on Biological Diversity, the Convention on International Trade in Endangered Species of Wild Fauna and Flora and the United Nations Framework Convention on Climate Change (UNFCCC);

REAFFIRMING their commitment to strengthen cooperation on bilateral, regional and global issues of common concern;

CONVINCED that a modernised EU-Mexico Global Agreement will prove beneficial to both Parties in generating growth, ensuring economic stability and security and promoting sustainable development

RECALLING the need to take urgent actions to tackle the climate crisis;

RECOGNISING that inclusive involvement and engagement with civil society in the implementation of the modernised EU-Mexico Global Agreement is essential for the timely identification of challenges, opportunities and priorities,

Express their shared desire to conclude the modernised EU-Mexico Global Agreement Chapter on Trade and Sustainable Development ('TSD Chapter') and reinforce their commitment to sustainable development in light of the challenges posed by the Climate Crisis. To ensure effective cooperation in adopting and implementing the TSD Chapter, the Parties will focus their efforts on the following areas:

1. The EU and Mexico will strengthen their efforts to ensure the envisaged TSD Chapter reflects and supports their highest level commitments to sustainable development. The

chapter should enable the Parties to pursue their climate policies as expressed in their respective nationally determined contributions under the Paris Agreement.

2. To this effect, the EU and Mexico agree to intensify cooperation through regular meetings under the High-Level Dialogues on Environment and Climate Change and within multilateral and regional forums, including the UNFCCC Conference of the Parties and Summit of Leaders of the EU and the Community of Latin American and Caribbean States.
3. The Parties will discuss opportunities for ensuring that the envisaged TSD Chapter allows for the effective implementation of their shared commitments to sustainable development, addresses areas and concerns of mutual interest and is consistently reflected within the modernised EU-Mexico Global Agreement as a whole. To this effect, the Parties will ensure that their commitments on market access and energy are consistent with these highest ambitions.
4. The Parties will ensure that the envisaged domestic advisory groups and the civil society forum are sufficiently supported in facilitating and monitoring the effective implementation of the envisaged TSD Chapter and their contributions are taken into consideration by the TSD Sub-Committee.
5. As regards their joint objective of ensuring the effective resolution of disagreements over compliance with or the interpretation of the Parties' commitments under the envisaged TSD Chapter, the Parties agree to continue their dialogue on the appropriate means of dispute settlement.
6. The Parties agree to continue their existing cooperation on sustainable development within the Joint Committee of the EU-Mexico Global Agreement.

B. EU-Mercosur Joint Instrument

EU-MERCOSUR JOINT INSTRUMENT DRAFT - SENSITIVE VERSION OF FEBRUARY 2023 PREAMBLE

Recalling historic links between the regions and shared values;

Having concluded negotiation for a comprehensive Association Agreement (AA) between the two regions;

Recalling the need to take urgent action to tackle the triple planetary crisis of climate change, biodiversity loss and pollution, as clearly pointed out by the most recent scientific evidence, including the Sixth Assessment Report of the IPCC published in August 2021, the 2019 IPBES global assessment report on biodiversity and ecosystem services, the 2022 Global Land Outlook and the IRP Global Resources Outlook 2019;

Recalling international commitments (as mentioned in the AA):

Rio Conference (UNCED) and subsequent Sustainable Development Conferences > 2030 Agenda for Sustainable Development

UN Declaration on Human Rights and UN Declaration on Rights of Indigenous Peoples

UNFCCC/Paris Agreement and the need to pursue its objectives in an ambitious manner

Convention on Biodiversity (CBD) and the Kunming-Montreal Global Biodiversity Framework and other biodiversity related Multilateral Environmental Agreements (MEAs), in particular the Convention on Migratory Species, the Convention on International Trade in Endangered Species of Flora and Fauna and the Ramsar Convention on Wetlands

Montreal Protocol on Substances that Deplete the Ozone Layer UN Convention to Combat Desertification

Global Forest Goals set out in the UN Strategic Plan on Forests

ILO Declarations

Convinced that the Agreement will be beneficial to both sides and further strengthen relations;

Determined to make the best use of the agreement to support a green transition, promote responsible and sustainable value chains and address the interlinked challenges of climate change, biodiversity loss and pollution;

Convinced that healthy ecosystems and the services they provide represent the foundation for sustainable development and long-term sustainable growth is dependent on nature;

Reiterating the urgency of achieving SDG target 15.2 "By 2020, promote the implementation of sustainable management of all types of forests, halt deforestation, restore degraded forests and substantially increase afforestation and reforestation globally"

Acknowledging with concern that according to the latest FAO data almost 90% of deforestation worldwide is due to agricultural expansion;

Reaffirming their commitment to effectively implement the Paris Agreement as well as to the CBD and to pursue the objectives of these agreements and instruments in an ambitious and mutually supportive manner;

Highlighting in this respect the important role of ecosystem protection, restoration and sustainable use and management, including tackling emissions from Land Use, Land-Use Change and Forestry and of increasing the implementation of Nature-Based Solutions in line with UNEP/EA.5/Res.5 to achieve the 2030 Agenda for Sustainable Development and the objectives of the Paris Agreement and the Convention on Biological Diversity;

Convinced that ratification and implementation of the Agreement will contribute to a sustainable post-COVID-19 recovery;

Underlining the mutually reinforcing nature of the two sides' economic, social and environmental objectives;

Determined to work together so that the trade relationship enhances sustainable development, in particular in support of a just transition to a green and low emissions net zero economy by or around mid-century.

This joint instrument, provides, in the sense of Article 31 of the Vienna Convention on the Law of Treaties, a statement of what Mercosur and the European Union agreed in a number of provisions under the EU-Mercosur Agreement that have been the object of public debate and concerns over an agreed interpretation thereof.

Under the Trade and Sustainable Chapter, the EU and Mercosur agreed to renew their commitment to sustainable trade. Given the high level of public interest, particularly in the fields of environment, labour and human rights, the EU and Mercosur have agreed to the following shared interpretation:

Non-regression and High and Effective Levels of Environmental and Labour Protection

In Article 2.2 of the TSD Chapter, the EU and Mercosur express their intention to strive to improve their relevant laws and policies so as to ensure high and effective levels of protection of the environment and of labour rights. This is in line with their overall objective expressed in Article 1 of the TSD Chapter to implement the trade agreement in a manner that contributes to sustainable development. These provisions will avoid a "race to the bottom" with regard to environmental and labour protection.

In addition, the EU and Mercosur commit in Article 2.3 of the TSD Chapter not to lower their environmental or labour standards with the intention of attracting foreign trade or investment. Furthermore, under Articles 2.4 and 2.5, the EU and Mercosur agree that they shall not fail, through action or inaction, to effectively enforce their domestic legislation or allow derogations from such legislation, in order to encourage trade or investment.

Furthermore, the promotion of sustainable economic and social development is among the guiding principles underpinning the Political and Cooperation part of the Agreement. In addition, in Art 26, the parties commit to step up cooperation with a view to strengthening implementation of international commitments in the field of environment and labour protection.

While reasonable discretion should be permitted for budgetary allocations between different policy or enforcement priorities, the EU and Mercosur understand that effective enforcement of environmental and labour laws requires that the resources allocated to relevant bodies responsible for enforcement of labour and environmental law at every level of government be maintained at a level such that domestic laws can be effectively implemented, monitored and enforced.

2. Climate Change

The commitment in Article 6.2 of the TSD Chapter and Article 29 of the Political and Cooperation chapter to effectively implement the UNCCC and the Paris Agreement in line with the best available science includes:

Timely communication and implementation of successive and progressive Nationally Determined Contributions (NDCs) reflecting the highest possible ambition, in accordance with Article 4.2 and 4.3 of the Paris Agreement and that therefore there will be no reduction in the level of ambition of each Party's NDC, including with respect to deforestation targets existing on 28 June 2019, i.e. the date of the political agreement on the EU-Mercosur text and as reflected in each Party's national laws;

Pursuit of domestic mitigation measures, with the aim of achieving the objectives of such NDCs, in accordance with Article 4.2 of the Paris Agreement;

Engagement, as appropriate, in adaptation planning processes and the implementation of actions, in accordance with Article 7.9 of the Paris Agreement, with the aim of contributing to the global goal on adaptation established in Article 7.1 of the Paris Agreement;

Submission and periodical update of an adaptation communication, in accordance with Article 7.10 of the Paris Agreement;

Submission of long-term low greenhouse gas emission development strategies, in accordance with Article 4.19 of the Paris Agreement and timely implementation thereof;

Legislative, regulatory and policy action aiming at making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development, in accordance with Article 2.1.c. of the Paris Agreement;

Reflection of the best available science in all aspects of implementation;

Updating and enhancing actions and support to the Paris Agreement objectives and goals by taking into account the outcome of the periodical global stocktake, in accordance with Articles 4.9 and 14 of the Paris Agreement;

Any further decisions made by the governing bodies of the UNFCCC and the Paris Agreement.

Recalling the objective in Article 1 of the TSD Chapter of integrating sustainable development in the Parties' trade and investment relationship, information submitted by each Party to the UNCCC Secretariat under Article 13 of the Paris Agreement will be taken into account in the monitoring of progress in effective implementation of the Paris Agreement in

Article 6 of the Trade and Sustainable Development Chapter of the EU - Mercosur Agreement.

3. Biological Diversity

The commitment to effectively implement multilateral environmental agreements in Article 5.3 of the TSD Chapter, including the Convention on Biological Diversity (CBD) implies, i.a.

Timely revision, updates, communication and implementation of National Biodiversity Strategies and Action Plans (NBSAPs), in accordance with Article 6a of the CBD and COP decision 15/6, including:

communication of national targets as foreseen in paragraphs 6 and 7 of the same decision and communication of national reports as foreseen in paragraphs 11 and 13;

taking the outcomes of the global reviews into account in future revisions and implementation of their NBSAPs, as foreseen in paragraph 20.

Effective implementation and monitoring of the Kunming-Montreal Global Biodiversity Framework (KMGBF) as agreed by the Conference of the Parties of the CBD in Decision 15/4, as well as Decisions 15/5, 15/7, 15/8 and 15/9, in particular the monitoring, reporting on and review of implementation of the KMGBF as well as the mobilization of resources and sharing of benefits of the use of Digital Sequence Information on Genetic Resources.

Integration of the conservation and sustainable use of biodiversity into relevant sectoral or cross-sectoral plans, programmes and policies and their implementation, in accordance with Article 6b of the CBD.

Any further decisions made by the governing bodies of the CBD.

The EU and Mercosur also highlight that Article 7.2 of the TSD Chapter further elaborates how the Parties intend to address trade-related aspects of biodiversity when implementing the agreement. Furthermore, in Article 27 of the Political and Cooperation Agreement, the parties commit to enhance environmental cooperation, including in the area of biodiversity, with the aim to contribute to the protection, conservation and sustainable use of natural resources.

4. Forests

The EU and Mercosur agree in Article 8 of the Trade and Sustainable Development chapter of the agreement to:

combat illegal logging and related trade and promote trade in forest products from sustainably managed forests.

Furthermore, the commitment on implementation of the Paris Agreement in Article 6.2 of the TSD Chapter requires them to:

take effective action to conserve and enhance sinks and reservoirs of greenhouse gases, including forests (Article 5 Paris Agreement.)

In Article 29 the Political and Cooperation Chapter of the Agreement, the parties also commit to enhance cooperation and policy dialogue on deforestation and forest degradation and restoration, with the objective to strengthen domestic policies.

In addition, the two sides are signatories to the Glasgow Leaders' Declaration on Forests and Land Use, where both sides committed to:

trade and development policies, internationally and domestically, that promote sustainable development and sustainable commodity production and consumption, that work to countries' mutual benefit and that do not drive deforestation and land degradation.

halt and reverse forest loss and land degradation by 2030 while delivering sustainable development and promoting an inclusive rural transformation. To this end the EU and Mercosur will set an interim target of reduction of deforestation of at least 50% from current levels by 2025.

In addition, the two sides are committed by 2025 to make significant progress in restoration of forests, maximizing the contributions to biodiversity conservation, climate change objectives and other co-benefits, such as those included in relevant national strategies and policies, the respective NDCs or international initiatives such as the Bonn Challenge or the G20 Global initiative on land restoration;

The EU and Mercosur recognize that forests have a key role to play in climate change mitigation and adaptation, as well as in the conservation and sustainable use of biological diversity. Therefore, the two sides will monitor the state and extent of forests so that their role as sinks or as sources of greenhouse gas emissions and ecosystem service providers can be better understood and action taken. In accordance with Decisions of the UNFCCC the role of forests in climate change emissions and carbon storage shall be reflected in their Nationally Determined Contributions under the Paris Agreement and reporting thereof, including actions to reduce deforestation and increase afforestation.

The EU and Mercosur will cooperate on measures to ensure that the products that EU and Mercosur citizens consume do not contribute to deforestation and forest degradation.

Both parties recognize the importance of taking action to eliminate sources of wildfires in or near forest areas, to further reduce deforestation and forest degradation.

Recalling Principle 10 of the Rio Principles, the EU and Mercosur also recognise that effective national and regional frameworks on rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters and their regular review are crucial for the implementation of environmental policy, including in ensuring that drivers of deforestation are properly addressed.

Articles 11.2, Article 13(n) and 13(o) of the TSD Chapter provide for the EU and Mercosur to cooperate on sustainable supply chains, including supply chains of products not linked to deforestation. Improved traceability, transparency and due diligence will be a key means to

develop sustainable supply chains. This will be a priority during implementation and to this end they will promote and support actions by the private and public sector.

5 Labour Rights

Both the EU and Mercosur are committed to the protection of labour rights and recognize the role of the International Labour Organisation as the key multilateral organisation in this field.

The EU and Mercosur understand that the obligation in Article 4.4 of the Trade and Sustainable Development (TSD) Chapter of the Agreement and Article 45bis of the Political Dialogue and Cooperation chapter to make continued and sustained efforts to ratify the fundamental ILO Conventions and other relevant Conventions imposes an ongoing obligation on a Party that has not ratified such a Convention to make efforts in this regard, while respecting the sovereign right of a Party to enter into additional international obligations. The commitment to respect, promote and effectively implement the ILO core labour standards is binding on both the EU and Mercosur, in accordance with Article 4.3 of the TSD Chapter.

In implementation of these commitments, the EU and Mercosur intend to place a specific focus on the eradication of child labour as well as on freedom of association and the effective recognition of the right to collective bargaining. The EU and Mercosur understand that the commitment to the effective implementation entails that each Party adopts relevant laws and regulations and exercises its jurisdiction and control by establishing a system for ensuring compliance with the requirements of the ILO core labour standards.

Furthermore, in line with the commitment to promote decent work in Article 4.10 of the TSD Chapter, Article 45bis of the Political Dialogue and Cooperation chapter and the ILO Declaration on Social Justice for a Fair Globalization of 2008, the EU and Mercosur underline the principle of social dialogue, which is a guiding principle of the ILO and understand that the ratification of fundamental and other relevant ILO Conventions should be carried out in a manner consistent with this principle.

6. Cooperation

The Parties have agreed in the Trade and Sustainable Development and Political Dialogue and Cooperation Chapters to promote the development of international trade in such a way as to contribute to the objective of sustainable development.

In order to achieve this objective, Mercosur and the EU highlight the importance of interregional cooperation and agree to prioritize in particular the following areas:

the implementation of multilateral commitments in the areas of climate change, biodiversity and the environment and of ILO labour standards;

the development of sustainable value chains across the EU and Mercosur, including by improving traceability, transparency, due diligence as well as the promotion of circular economy and resource efficiency; the conservation and sustainable management of natural resources;

support for the role of indigenous and local communities in forest protection; the promotion of research and development, e.g. in the field of satellite monitoring of deforestation and forest fires.

The Parties emphasise that such cooperation should not only involve governments, but also businesses, academia and civil society, in line with their respective roles in promoting sustainable development.

7. Human Rights

In Art 11 of the Political Dialogue and Cooperation chapter, the EU and Mercosur have committed to cooperate on the promotion and protection of human rights, including the ratification and implementation of international human rights instruments. This includes the rights of indigenous peoples, as defined inter alia in the UN Declaration on the Rights of Indigenous Peoples as well as, where relevant, in the Parties' Constitutions. It is understood that such rights include rights to land under traditional use by such communities.

8. Civil Society

Pursuant to Article 10 of the Political and Cooperation agreement, Mercosur and the EU highlight the key role of civil society organisations in the effective implementation of the Agreement. Through the establishment of a consultation mechanism and the promotion of interaction between the representatives of their civil society, the Agreement will leverage a broad-based involvement of civil society actors, including non-governmental organizations, business and employers' organizations and trade unions.

The active involvement of civil society organizations will play a key role in the monitoring and implementation of all aspects of the agreement, including the trade and sustainable development objectives.

9. Monitoring and Review

Pursuant to the institutional provisions of the Trade and Political and Cooperation Agreement [parts], the Parties will meet to monitor and assess implementation of the Agreement and to oversee the fulfilment of its objectives, as set out in Article 1.2, Chapter 1 [Initial Provisions] of the Trade [part], which include (but are not limited to) the development of international trade and of trade between the Parties in a manner that contributes to sustainable development as well as the establishment of a framework for the participation of civil society to support the effective implementation of this Agreement. As these objectives are mutually reinforcing, the Parties will seek to build synergies between them using the mechanisms established in the Agreement, as well as other domestic mechanisms, as appropriate.

The Agreement provides for a specific forum to monitor the implementation of the Trade and Sustainable Development Chapter, as set out in Article 14 of the TSD Chapter.

The Parties agree that to ensure an effective implementation of TSD commitments they will develop a roadmap towards meeting these commitments and put in place a series of actions and cooperation activities.

C. EU-Chile Joint Instrument

The Joint Statement agreed in December 2022 provides more clarity on the interpretation of key provisions, including addressing the urgent threat of climate change, protecting and conserving the environment. Furthermore, the joint statement mandates Parties to initiate a formal review process of the agreement's trade and sustainable development aspects, including enhancing the enforcement mechanism of the Trade and Sustainable Development chapter. Hence, an element that could be further expanded is cooperation and commitment of technical and financial resources, for which the joint statement agreed between the EU and Kenya may become an example.

JOINT STATEMENT ON TRADE AND SUSTAINABLE DEVELOPMENT BY THE EUROPEAN UNION AND CHILE

The Parties,

RECALLING their shared values and the strong cultural, political, economic and cooperation ties which unite them;

RECALLING their commitment to modernise and replace the EU-Chile Association Agreement, concluded in 2002, to reflect new political and economic realities;

REAFFIRMING their commitment to strengthen cooperation on bilateral, regional and global issues of common concern;

CONVINCED that the modernised EU-Chile Agreement and the interim Free Trade Agreement (the Agreements) [titles to be confirmed] will be beneficial to both Parties in fuelling economic recovery from the COVID-19 crisis, generating growth in a geopolitical context marked by heightened instability and further strengthening their ties;

[RECALLING their international commitments (as mentioned in the interim Free Trade Agreement [titles to be confirmed] related to the protection of the environment;]

DETERMINED to ensure that the Agreements fosters sustainability, so that economic growth goes together with the protection of decent work, the climate and the environment, in full adherence to the Parties' shared values and priorities, including support for green transition and promoting responsible and sustainable value chains;

[RECALLING the need to take urgent actions to tackle the climate crisis;]

RECOGNISING that an inclusive involvement of civil society in the implementation of the Agreements is essential for a timely identification of challenges, opportunities and priorities and to monitor respective agreed actions, [and]

[RECALLING the commitment to initiate a formal review process of the interim Free Trade Agreement, agreed in the Joint Statement subscribed in December 2022,]

Express their joint intent to swiftly conclude the Agreements and subsequently cooperate on the implementation of their sustainability aspects guided by the following considerations:

[Commit, in the context of the Rendez-Vous clause, to further explore strengthening mutual mechanisms for the effective implementation and application of TSD commitments, within the initial review period. Such exploration in the furtherance of mutual compliance may include implementation roadmaps, financial and technical assistance, encouragement of participatory approaches as well as ways to address potential divergences in the implementation of agreed commitments.]

D. EU-Andean Community Joint Instrument

For the case of the EU-Andean Community agreement, it may be recognized that there is a need to update and modernize the provisions related to the environment. Particularly, the agreement does not explicitly refer to NDCs and this could be added to a reviewed version. Hence, based on the EU-Chile modernized agreement, the proposed joint statement refers to the need to include a reference to the NDCs, as well as expand the scope of the agreement by the inclusion of new topics of interest, amongst them, but not limited to; Trade and Sustainable Management of Fisheries and Aquaculture, Trade and Wild Flora and Fauna, energy and raw materials and green transition. Also, as in the case of Chile, it is mentioned that there is a need to strengthen dispute settlement mechanisms, cooperation and technical and financial resources commitments.

JOINT STATEMENT ON TRADE AND SUSTAINABLE DEVELOPMENT BY THE EUROPEAN UNION AND COLOMBIA, ECUADOR AND PERU

The Parties,

RECALLING their shared values and the strong cultural, political, economic and cooperation ties which unite them;

RECALLING the need to modernise and replace the EU-Colombia-Ecuador-Peru Agreement, concluded in 2013, to reflect new political and economic realities;

REAFFIRMING their commitment to strengthen cooperation on bilateral, regional and global issues of common concern;

CONVINCED that a modernised EU-Colombia-Ecuador-Peru Agreement will be beneficial to both Parties in fuelling economic recovery from the COVID-19 crisis, generating growth in a geopolitical context marked by heightened instability and further strengthening their ties;

RECALLING their international commitments (including those mentioned in the EU-Colombia-Ecuador-Peru Agreement) related to the protection of the environment;

DETERMINED to ensure that the Agreements fosters sustainability, so that economic growth goes together with the protection of decent work, the climate and the environment, in full

adherence to the Parties' shared values and priorities, including support for green transition and promoting responsible and sustainable value chains; and

RECALLING the need to take urgent actions to tackle the climate crisis;

RECOGNISING that an inclusive involvement of civil society in the implementation of the Agreements is essential for a timely identification of challenges, opportunities and priorities and to monitor respective agreed actions,

Express their joint intent to modernize the commitments included in Title IX on Trade and Sustainable Development in order to include new dispositions to reflect new political, social, economic and environmental realities and subsequently cooperate on the implementation of their sustainability aspects guided by the following considerations:

1. As regards their joint objective of addressing the urgent threat of climate change, the Parties underline their commitment to effectively implement the United Nations Framework Convention on Climate Change and the Paris Agreement adopted thereunder, including their commitments with regard to their respective Nationally Determined Contribution. For this, it becomes of the utmost importance to update Article 275 on Climate Change to explicitly include reference to Nationally Determined Contribution (NDCs), as included in recent EU agreements.²⁶¹

2. As regards their joint objective of protecting and conserving the environment and sustainably managing their natural resources, the Parties underline their commitment to effectively implement the multilateral environmental agreements and protocols to which they are respectively a party, including the Convention on Biological Diversity (CBD).

3. To expand the scope of the agreement by the inclusion of new topics of interest amongst them, but not limited to, Trade and Sustainable Management of Fisheries and Aquaculture, Trade and Wild Flora and Fauna, energy and raw materials and green transition.

4. Strengthen the dispute settlement mechanism initiating a formal review process of its trade and sustainable development aspects in order to consider the incorporation, as appropriate, of additional provisions that may be deemed relevant by either Party at that time, including in the context of their respective domestic policy developments and their recent international treaty practice, as the Parties may consider appropriate. Such additional provisions may relate, in particular, to further enhancing the enforcement mechanism of the Trade and Sustainable Development chapter, including the possibility to apply a compliance phase and relevant countermeasures as last resort.

²⁶¹ For instance, Article 26.10(a) of the EU-Chile Interim Free Trade Agreement states: "Pursuant to paragraph 1, each Party shall: (a) effectively implement the UNFCCC and the Paris Agreement adopted thereunder including its commitments with regard to its Nationally Determined Contribution."

The Parties note that their joint objective of enhancing the inclusive participation of civil society and of regularly exchanging views with their respective Domestic Consultative Group, including on relevant technical assistance projects, comprises the trade and sustainability aspects of the Agreements. The Parties underline their commitment to promote and facilitate the interaction between their respective Domestic Consultative Groups through the means they consider appropriate, including periodical meetings. The Parties express their intention to support the Domestic Consultative Groups in line with their domestic legislation and policies. The Parties will seek views and participation of the civil society on matters related to the implementation of the Chapter, including on the follow-up of commitments taken by the Parties.

Commit, in the context of the Rendez-Vous clause, to further explore strengthening mutual mechanisms for the effective implementation and application of TSD commitments, within the initial review period. Such exploration in the furtherance of mutual compliance may include implementation roadmaps, financial and technical assistance, encouragement of participatory approaches as well as ways to address potential divergences in the implementation of agreed commitments.

The Parties will aim to conclude the review process within 12 months and to incorporate any agreed outcome of the review process by amending the Agreements in accordance with Articles YY of the EU-Colombia-Ecuador-Peru Agreement.

E. EU-Central America Joint Instrument

DECLARATION ON TRADE, COOPERATION AND SUSTAINABLE DEVELOPMENT BY THE EUROPEAN UNION AND CENTRAL AMERICA

The Parties,

RECALLING the need to modernise the EU-CA Agreement, concluded in 2012, to reflect new political and economic, social and environmental realities;

REAFFIRMING their commitment to strengthen cooperation on issues of common concern, including climate change, biodiversity loss and pollution;

CONCIUOS of the vulnerability of the CA region to the adverse impacts of climate change and the priority to adopt appropriate mitigation measures;

CONVINCED that a modernised EU-CA will be beneficial to the Parties in fuelling economic recovery from the COVID-19 crisis;

RECALLING their international commitments, including those mentioned in the EU-CA Agreement related to the protection of the environment and the need to update these commitments to reflect new and emerging instruments;

DETERMINED to ensure that the Agreements fosters sustainability, so that economic growth goes together with the protection of decent work, the climate and the environment, in full adherence to the Parties' shared values and priorities, including support for green transition and promoting responsible and sustainable value chains;

RECOGNIZING: the different provisions of the EU-CA Agreement, especially those related to trade and sustainable development and cooperation, among others;

AWARE of the recent developments on the trade and sustainable development field, specially the EU Green Deal and the subsequent actions and initiatives taken in that context, including to prevent the trade in raw materials and products causing deforestation and land degradation, its impacts on the productive sectors of the CA countries and the need to promote and strengthen cooperation in this field;

RECALLING the need to take urgent actions to tackle the climate crisis, biodiversity loss and pollution as a main threat to our societies;

RECOGNISING that an inclusive involvement of civil society in the implementation of the Agreements is essential for a timely identification of challenges, opportunities and priorities and to monitor respective agreed actions,

Express their joint declaration to modernize the commitments included in Title VIII on Trade and Sustainable Development ²⁶²and in other provisions of the EU-CA Agreement, in order to reflect new political, social, economic and environmental realities and subsequently cooperate on the implementation of their sustainability aspects guided by the following considerations:

1. As regards their joint objective of addressing the urgent threat of climate change (including mitigation and adaption actions), the Parties underline their commitment to effectively implement the United Nations Framework Convention on Climate Change and the Paris Agreement adopted thereunder, including their commitments with regard to their respective Nationally Determined Contribution and other national plans and strategies, as included in recent EU agreements.

²⁶² Title VIII establishes the obligations assumed by the Parties in environmental matters, under the commitment to effectively apply the environmental legislation of each country and promote a cooperative approach to identify joint and collaborative solutions to better achieve the objectives of sustainable development, through the implementation of mechanisms for civil society participation, including a regional forum for dialogue organized and facilitated by the governments, open to all economic, social or environmental stakeholders interested in sustainable development issues.

2. As regards their joint objective of protecting and conserving the environment and sustainably managing their natural resources, the Parties underline their commitment to effectively implement the multilateral environmental agreements and protocols to which they are respectively a party, specially the Convention on Biological Diversity (CBD), its Nagoya Protocol on Access to Genetic Resources and Benefit Sharing and the Global Biodiversity Framework.

3. The Parties recognize that Multilateral Environmental Agreements are key elements to achieve sustainable development and address effectively national, regional and global concerns. The Parties will consider in good faith the new international agreements and negotiating process in order to determine whether to sign, ratify, accede and eventually implement, emerging legal regimens in critical areas such as conservation and sustainable use of biodiversity in areas beyond national jurisdiction, plastic pollution instruments, pandemic prevention treaties, intellectual property and genetic resources, among others.

4. Cooperation and political dialogue elements related to new international commitments in the areas of climate change and biodiversity and other multilateral environmental negotiations should be strengthen.

5. Cooperation should also be more concretely linked with processes of interest in the region, such as:

- a) The effects of EU environmental policies on trade in the region, especially in the area of agricultural and industrial chemicals.
- b) Improving the implementation and enforcement of regulations of special interest, such as forestry - including provisions on land use change, deforestation and others - waste management, sustainable agriculture and climate change adaptation.
- c) Promote building incentive systems of different nature (payment for environmental services, electric vehicles, energy efficiency, green taxes, among many others) It is critical to maintain the policy and regulatory space on these matters, which are closely related to the region's commitments in its NDCs.
- d) Emerging issues such as Nature-Based Solutions, plastic life cycle, its effects and legal and policy responses, should be given a priority.

6. To refined the commitments agreed in the agreement by the inclusion of new topics of interest to be determined by the appropriate bodies reflecting the current status of the discussions in the field of trade and sustainable development.

7. The Parties note their joint objective of enhancing the inclusive participation of civil society in the light of new international developments in the region, including relevant interpretation of judicial bodies.

F. EU-New Zealand Joint Instrument

**JOINT STATEMENT ON TRADE AND SUSTAINABLE DEVELOPMENT BY THE EUROPEAN UNION
AND NEW ZEALAND**

The Parties,

RECALLING the obligation in Article 19.6.5 to “work together to strengthen their cooperation on trade-related aspects of climate change policies and measures bilaterally and regionally”;

RECALLING their recognition in Article 19.6.1 of the role of trade in combatting climate change and its impacts; and

NOTING the powers afforded to the Committee on Trade and Sustainable Development under Article 24.4.6;

RESOLVE to:

1. Develop a written work plan (the Work Plan) within one year of the date of the first meeting of the Committee on Trade and Sustainable Development. The Work Plan will:
 - a. identify specific activities to be undertaken by the Parties within the following three years that will strengthen their cooperation pursuant to Article 19.6.5;
 - b. provide sufficient detail of the nature and purpose of the planned activities so as to enable the Parties to implement them;
 - c. be updated at least every three years so as to ensure that the cooperation programme operates in a continuous manner;
 - d. be subject to amendment as agreed by the Parties; and
 - e. include at least some activities that involve third countries with a view to increasing the climate-related ambition of those countries where possible.

2. Review progress in implementing the Work Plan at regular meetings of the Committee on Trade and Sustainable Development and include a report on such progress in the reports of the Committee as required under Article 19.15.3.

Conduct a review within five years of the date of entry into force of the Agreement to determine the extent to which cooperative activities undertaken pursuant to the Work Plan have been successful in strengthening the Parties' cooperation on trade-related aspects of climate change policies and measures and whether such activities have advanced the role of trade in combatting climate change and its impacts.

*With thanks and recognition to
experts and partners from:*



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